

Regulatory History

Pursuant to 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Harvard-Yale Regatta is a long-standing and popular local event. The public is well aware of the general procedures followed to hold this annual event. This regulation simply changes the time of the event to allow the race committee to hold the event during hours correlating with certain tidal conditions. Little commercial traffic is known to transit the area. However, sufficient notice will be provided for any affected party to alter plans with minimal impact. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards to the maritime public.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the boating public from possible dangers and hazards associated with this event. In accordance with the provisions of the permanent regulation governing the conduct of the Harvard-Yale Regatta, a portion of the Thames River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the Thames River between Bartlett's Cove and the Penn Central Draw Bridge in New London, Connecticut. This regulation changes the time of the event published in 100 CFR 100.101; race times will be published prior to the event in the Coast Guard Local Notice to Mariners. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the race course area and establish spectator anchorages for what is expected to be a large spectator fleet.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full

Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This rule constitutes a temporary revision of the permanent regulations governing the running of the Harvard-Yale Regatta published in 33 CFR 100.101, by changing the effective period of the regulations. The public is fully aware of the terms and conditions of this annual event. Commercial traffic on the affected portion of the Thames River is infrequent. The race is popular and of short duration. Local commercial entities and the U.S. Navy have been notified of the race schedule. Vessel traffic may be allowed to transit the regulated area at the discretion of the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. Small entities include independently owned and operated small businesses that are not dominant in their field, and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal, and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B it is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

For the reasons set forth in the preamble, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Paragraph (b) of § 100.101, is temporarily revised to read as follows:

§ 100.101 Harvard-Yale Regatta, Thames River, New London, CT.

* * * * *

(b) *Effective period.* This section is effective between the hours of 4 p.m. and 8 p.m. on June 4, 1994. If the races scheduled for June 4, 1994 are postponed, this regulation will be effective between the hours of 12:45 p.m. and 3:15 p.m. on June 5, 1994.

* * * * *

Dated: May 12, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 94-12403 Filed 5-19-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD01-94-043]

RIN 2115-AA97

Safety Zone; South Street Seaport Memorial Day Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a Memorial Day fireworks program located in the East River. This event is sponsored by South Street Seaport, Inc., and will take place on May 29, 1994, from 8 p.m. until 10 p.m. This safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

EFFECTIVE DATE: This rule is effective from 8 p.m. until 10 p.m. on May 29, 1994.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi, Project Manager, Captain of the Port, New York (212) 668-7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after *Federal Register* publication. Due to the date this application was received, there was not sufficient time to publish a proposed rule in advance of the event. Publishing an NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing.

Background and Purpose

On April 18, 1994, South Street Seaport, Inc. submitted an application to hold a fireworks program in the East River off of South Street Seaport, Manhattan, New York. This regulation establishes a temporary safety zone in all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. This safety zone is being established to protect boaters from the hazards associated with fireworks exploding in the area. No vessel will be permitted to enter or move within this safety zone unless authorized to do so by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). No vessel traffic will be permitted to transit the East River between the Brooklyn Bridge and a line drawn from Pier 9, Manhattan to Pier 3 Brooklyn at any time the safety zone is in effect. Although there is a regular flow of traffic through this area, there is not likely to be a significant impact on recreational or commercial traffic for several reasons. Due to the limited duration of the event, the late hour of the event, the extensive, advance advisories that will be made to the affected maritime community to allow for the scheduling of transits before and after the event, and that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impact of this regulation to be so

minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to promote maritime safety and protect the environment, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01-043 is added to read as follows:

§ 165.T01-043 South Street Seaport Memorial Day Fireworks, East River, New York.

(a) *Location.* This temporary safety zone includes all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan, to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 8 p.m. until 10 p.m. on May 29, 1994.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 5, 1994.

T.H. Gilmour,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94-12405 Filed 5-19-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD01-94-022]

RIN 2115-AA97

Safety Zone; North Hempstead Memorial Day Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the North Hempstead Memorial Day Fireworks in Hempstead Harbor. This event is sponsored by the Town of North Hempstead, and will take place from 8 p.m. until 10 p.m. on May 27, 1994, with a rain date of May 28, 1994, at the same times. This safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

EFFECTIVE DATE: This rule is effective from 8 p.m. until 10 p.m. on May 27, 1994, with a rain date of May 28, 1994, at the same times.

FOR FURTHER INFORMATION CONTACT:

Lt R. Trabocchi, Project Manager,
Captain of the Port, New York, (212)
668-7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after *Federal Register* publication. Due to the date this application was received, there was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing.

Background and Purpose

On March 10, 1994, the Town of North Hempstead submitted an application to hold a fireworks display in Hempstead Harbor north of Bar Beach. This regulation establishes a temporary safety zone in all waters of Hempstead Harbor within a 300 yard radius from the center of three fireworks barges anchored together north of Bar Beach, New York. This safety zone is being established to protect boaters from the hazards associated with fireworks exploding in the area. No vessel will be permitted to enter or move within this safety zone unless authorized to do so by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). No vessel traffic is permitted to transit within a 300 yard radius of three fireworks barges anchored together north of Bar Beach in Hempstead Harbor, New York. This safety zone will completely block the navigable waters in this area; however, due to the limited duration of the event, the extensive, advance advisories that will be made to allow recreational and commercial traffic to make necessary transits before or after the event, and the limited traffic routinely operating in the area at the time of the event, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to promote maritime safety and protect the environment, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01-022 is added to read as follows:

§ 165.T01-022 North Hempstead Memorial Day Fireworks, Hempstead Harbor, New York.

(a) *Location.* This temporary safety zone includes all waters of Hempstead Harbor within a 300 yard radius from the center of three fireworks barges anchored together north of Bar Beach, New York, at or near 40°49'50" N latitude and 73°39'10" W longitude.

(b) *Effective period.* This section is effective from 8 p.m. until 10 p.m. on May 27, 1994, with a rain date of May 28 1994, at the same times.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officer of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 5, 1994.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94-12404 Filed 5-19-94; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL-4881-9]

RIN 2060-AE00

Hazardous Air Pollutants: Regulations Governing Equivalent Emission Limitations by Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating regulations governing the establishment of equivalent emission limitations by permit, pursuant to section 112(j) of the Clean Air Act (Act), as amended. This rule establishes requirements and procedures for owners or operators of major sources of hazardous air pollutant(s) (HAP), and permitting authorities, to follow in order to comply with section 112(j). After the effective date of a title V permit program in a State, each owner or operator of a major

source in a source category for which the EPA was scheduled to, but failed to promulgate a maximum achievable control technology (MACT) standard will be required to submit a permit application 18 months after the EPA's missed promulgation date. This rule establishes requirements for the contents of these applications. In addition, the rule contains provisions governing the establishment of MACT-equivalent emission limitations by the permitting authority.

EFFECTIVE DATE: The rule and guidance announced herein take effect on June 20, 1994.

ADDRESSES: *Docket.* Supporting information used in developing the proposed and final rules contained in Docket Number A-93-32. The docket is available for public inspection and copying from 8:30 a.m.-12 p.m. and 1:30 p.m.-3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on today's final rule, please contact Ms. Katherine Kaufman, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541-0102. For information about the guidance document "MACT Determinations under Section 112(j)" (EPA 450/3-92-007a), please contact Ms. Lynn Hutchinson, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541-5624.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. Summary of Final Rule
- II. Background Discussion
 - A. Clean Air Act Amendments: Section 112
 - B. Clean Air Act Amendments: Provisions for Equivalent Emission Limitation by Permit
 - C. Implementation Principles
- III. Significant Comments and Changes to the Proposed Rule
 - A. § 6.50—Applicability
 - B. § 6.51—Definitions
 - C. § 6.52—Approval Process for New and Existing Emission Units

- D. § 6.53—Application Content for a Case-by-Case MACT Determination
- E. § 6.54—Preconstruction Procedures for New Emission Units
- F. § 6.55—Maximum Achievable Control Technology (MACT) Determinations for Emission Units Subject to Case-by-Case Determination of Equivalent Emission Limitations
- G. § 6.56—Requirements for Case-by-Case Determination of Equivalent Emission Limitations After Promulgation of a Subsequent MACT Standard
- IV. Discussion of the Relationship of the Proposed Requirements to Other Requirements of the Act
 - A. Section 112(g) Requirements for Constructed, Reconstructed, and Modified Major Sources; and Subsequent Standards under Section 112(d) or Section 112(h).
 - B. Section 112(l) Delegation Process
 - C. Section 112(i)(5) Early Reductions Program
- V. Administrative Requirements
 - A. Docket
 - B. Executive Order 12866
 - C. Regulatory Flexibility Act
 - D. Paperwork Reduction Act

This preamble provides an overview of the rule implementing the requirements of the section 112(j) program, and a detailed discussion of the changes made to the proposed regulation.

The first section provides an overview of the requirements of the regulation being promulgated today.

The second section provides background information on section 112(j) in the context of the 1990 amendments to the Act.

The third section provides a detailed discussion of the requirements of the rule, including significant comments as well as significant changes made since the proposal.

The fourth section of this preamble discusses the relationship of the requirements of section 112(j) to other requirements of the Act under other subsections of section 112 of the Act.

The fifth section of this preamble demonstrates that the rulemaking is consistent with a number of federal administrative requirements.

This preamble makes use of the term "State," usually meaning the State air pollution control agency which will be the permitting authority implementing the section 112(j) program. The reader should assume that use of the word "State" also applies, as defined in section 302(d) of the Act, to the District

of Columbia and territories of the United States, and may also include reference to a local air pollution control agency. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or the EPA in implementing the section 112(j) program. In some cases, the term "permitting authority" is used and can refer to both State agencies and to local agencies (when the local agency directly makes the determinations or assists the State in making the determinations). The term "permitting authority" may also apply to the EPA, in rare cases where the EPA is the title V permitting authority responsible for the program.

This preamble makes a number of references to a regulation which has not yet been promulgated. That is the rule governing constructed, reconstructed, or modified major sources under section 112(g) of the Act, which EPA has proposed on April 1, 1994, in the Federal Register at 59 FR 15504.

I. Summary of Final Rule

Today's rule implements the requirements of section 112(j) of the Clean Air Act, as amended in 1990. Section 112(j) establishes requirements for regulation of major sources of hazardous air pollutants in the event that EPA lags more than 18 months behind schedule in issuing a control technology standard for an industry.

Section 112 requires EPA to set MACT standards for all categories of major sources of hazardous air pollutants. Specifically, the Act has required EPA to issue a schedule for regulating all source categories within 2, 4, 7, or 10 years of enactment. The source category schedule for standards was published on December 3, 1993 (58 FR 63941).

Section 112(j) is triggered on the date 18 months after the deadline listed in the final schedule for a source category, if the EPA has failed to promulgate a MACT standard for that source category by that date. These deadlines are displayed in Table 1. Upon this 18-month deadline, the owner or operator of each major source with emission units in that category must apply for a case-by-case MACT determination by the title V permitting authority. There are four possible section 112(j) deadlines, as displayed in Table 1 below.

TABLE 1.—SECTION 112(J) DEADLINES

MACT standard deadline	Section 112(j) deadline	Comments
2-year standards: November 15, 1992	May 15, 1994 [but not before effective date of Title V permit program].	The EPA has promulgated the 2-year standards. This deadline will not be triggered. This is the earliest that section 112(j) could be triggered.
4-year standards: November 15, 1994	May 15, 1996	
7-year standards: November 15, 1997	May 15, 1999	
10-year standards: November 15, 2000	May 15, 2002	

The EPA has fulfilled its requirements with respect to the 2-year MACT standards, so there are essentially three possible dates upon which section 112(j) requirements could take effect: (1) May 15, 1996, (2) May 15, 1999, and (3) May 15, 2002. Section 112(j) cannot take effect before the effective date of a title V permit program in a State; the EPA expects that permit programs will be operative in all States by May 15, 1996.

If the deadline for a particular category passes, section 112(j) requires that any source associated with that category, that is part of a major source, must obtain an "equivalent emission limitation by permit." "By permit" means that the emission limitation is recorded in the title V operating permit. "Equivalent emission limitation" means a limitation, determined on a case-by-case basis by the permitting authority, that is judged to be equivalent to the limit the EPA would have established had the federal MACT standard been published.

The rule uses the term "emission unit" rather than the term "source" which appears in section 112(j). The term "source" is used to describe the extent of coverage of standards issued pursuant to section 112(d) and section 112(h). The EPA is concerned that if the term "source" is used in reference to section 112(j), there may be potential misperceptions that section 112(j) determinations could constrain the EPA's definition of "source" in a subsequent rulemaking.

A. Requirements for Existing Emission Units

For emission units in existence at major source plant sites as of the section 112(j) deadline, today's rule contains some important clarifications of the Act. The statute is clear that applicants must submit an application by the section 112(j) deadline, and that the title V permitting process must be followed in establishing permit conditions within an 18-month time frame thereafter. Within this overall framework, the statute is less prescriptive regarding: (1) The contents of the permit application, (2) the process that is used within the 18-month permit issuance time frame to

establish equivalent emission limitations, and (3) the nature of the terms and conditions that must be established in the permit.

Section 6.52 is intended to provide further clarity to the permit review process. The requirements for permit application content are listed in § 6.53. Principles governing the establishment of MACT emission limitations, including the nature of the terms and conditions, are outlined in § 6.55, and in a more detailed guidance document titled: "MACT Determinations under Section 112(j)" (EPA 450/3-92-007a), which EPA is making available today.

B. Requirements for New Emission Units

For new emission units subject to the requirements of section 112(j), today's rule provides a number of important statutory interpretations, and provides a clarification of the minimum administrative requirements of the Act.

When newly constructed emission points are added to an existing major source plant site, those emission points could be considered as either: (1) An addition to an existing "emission unit" for which an existing source level of control would be required, or (2) an entirely new "emission unit" for which new source MACT would be required. Today's rule contains a definition of "emission unit" which gives broad discretion to the permitting authority to determine whether a given emission point or points should be treated as "new."

Another important clarification in the rule is the date which triggers new source requirements. Today's rule defines as "new" an emission unit for which construction commences after the section 112(j) deadline or after proposal of a section 112 (d) or (h) MACT standard, whichever comes first.

Section 112(j) of the statute does not mandate a preconstruction review for new emission units subject to section 112(j). However, the EPA recognizes that there are important reasons for permitting authorities and affected source owners and operators to follow a preconstruction or pre-operation review process. The rule contains, as § 6.54, an optional preconstruction or pre-

operation review process that can be used for this purpose.

C. Relationship to Subsequently Promulgated MACT Standards

The Act provides for a compliance extension when an emission unit covered by a case-by-case MACT emission limitation under section 112(j) is later affected by a subsequent federal MACT standard promulgated pursuant to section 112(d) or section 112(h) of the Act. This provision is addressed in § 6.56 of today's rule.

II. Background Discussion

A. Clean Air Act Amendments: Section 112

The Clean Air Act Amendments of 1990 [Pub. L. 101-549] contain major changes to section 112 of the Act pertaining to the control of HAP emissions. Section 112(b) includes a HAP list that is composed of 189 chemicals, including 172 specific chemicals and 17 compound classes. Section 112(c) requires publication of a list of source categories and subcategories of major sources emitting these HAPs, and also requires the listing of area sources that the EPA determines warrant regulation. Section 112(d) requires promulgation of emission standards for each listed source category or subcategory according to a schedule set forth in section 112(e).

B. Clean Air Act Amendments: Provisions for Equivalent Emission Limitation by Permit

1. General Requirements of Section 112(j)

The amendments to section 112 include new section 112(j). This section is entitled "Equivalent Emission Limitation by Permit." Subsection 112(j)(2) of the Act provides that section 112(j) applies if EPA misses a deadline for promulgation of a standard under section 112(d) established

in the source category schedule for standards: In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e) (1) and (3), and beginning 18 months after such date (but not prior to the effective date of a permit

program under title V), the owner or operator of any major source in such category or subcategory shall submit a permit application.

Subsection 112(j)(3) requires the owner or operator to submit a permit application 18 months after the missed promulgation deadline:

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit.

Subsection 112(j)(3) also requires EPA to establish requirements for permit applications, including content and criteria for the reviewing agency to determine completeness. In addition, subsection 112(j)(3) provides that if the reviewing agency deems the application incomplete, or disapproves the application, then the applicant has up to 6 months to revise and resubmit the application.

Subsection 112(j)(5) establishes a requirement for case-by-case MACT determinations:

The permit shall be issued pursuant to title V and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d).

Subsection 112(j)(5) also establishes compliance dates:

No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

Finally, subsection 112(j)(5) specifies that if the applicable criteria for voluntary early reductions, established under section 112(i)(5), are met, then this alternative emission limit satisfies the requirements of section 112(j), provided that the emission reductions are achieved by the missed promulgation date.

In the event that EPA promulgates a given MACT standard for the applicable source category before the permit application is approved, the permit must reflect this promulgated standard, rather than the case-by-case MACT determination. The source is required to comply with this standard by the date provided under subsection (i). In this case, the owner or operator of an existing source has no more than 3 years to comply, and the owner or operator of a new source must comply immediately upon startup, except that a new source

that commenced construction or reconstruction between proposal and promulgation of the MACT standard may elect to comply with the proposed standard for 3 years in lieu of the promulgated MACT standard, if the promulgated MACT standard is more stringent than the proposal.

In the event that EPA promulgates a given MACT standard after the permit containing case-by-case emission limits is issued, section 112(j)(6) allows a longer compliance period:

If the Administrator promulgates a standard under subsection (d) * * * after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

C. Implementation Principles

In designing guidance for case-by-case MACT determinations, the EPA's thinking is guided primarily by the need for section 112(j) standards to be substantively equivalent to section 112(d) MACT standards. Subsection 112(j)(5) requires that a case-by-case MACT determination be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)," and subsection 112(j)(6) requires eventual compliance with subsequently promulgated section 112(d) standards. Consistency in standard-setting will smooth a major source's eventual transition from compliance with section 112(j) to compliance with section 112(d), making implementation of toxics control easier on both States and industry.

The EPA's other major goal in establishing section 112(j) requirements is to achieve and maintain consistency across section 112 programs. The EPA intends for administrative and operational requirements under section 112(j) to be consistent with the requirements of section 112(g) rules for construction, reconstruction, and modification of major sources (proposed at 59 FR 15504 on April 1, 1994, as § 63.40 through 63.49 of subpart B) and with the general provisions for section 112 (published at 59 FR 12408 on March 16, 1994, as subpart A of this part). Section IV. A. of this preamble discusses likely overlapping requirements and major substantive differences across these programs.

III. Significant Comments and Changes to the Proposed Rule

This section of the preamble is organized by each topic area in subpart B, and contains a detailed discussion of the principal regulatory issues and changes made in the final rule, particularly in response to public comments. It also discusses some comments that did not result in regulatory changes.

A. Section 63.50—Applicability

1. Section 63.50(a)—Applicability

Paragraph 63.50(a) of today's rule indicates that the intent of the rule is to implement section 112(j) of the Act. This paragraph indicates that section 112(j) applies to the owner or operator of a major source of HAPs after the "effective date of a Title V program" in each State, but not before May 15, 1994.

(a) *Effective date of title V.* The meaning of "effective date of a Title V program" is indicated in the final regulations for implementation of title V of the Act. Under these regulations, States were required to submit a permit program for review by the EPA on or before November 15, 1993. The EPA is required to approve or disapprove the permit program within one year after receiving the submittal. The EPA's program approval date is termed the "effective date."

The effective date of title V permit programs is defined in section 502(h) of the Act, which says "The effective date of a permit program, or partial or interim program, approved under * * * [Title V] * * * shall be the date of promulgation." This language refers to two types of title V programs: One type where the EPA "approves" the title V program under 40 CFR part 70 and another type where the EPA "promulgates" a program. Programs "approved" by the EPA under part 70 will be developed by the State or local area and submitted to the EPA for approval. The language in section 502(h) of the Act makes these programs immediately effective upon EPA approval. Programs "promulgated" by the EPA are anticipated to be rare, and they occur only where a State failed to submit a program, submitted a program that EPA could not approve, or has failed to adequately administer an approved program. For example, the EPA is required by section 502(d)(3) of the Act to promulgate and administer a title V program if, by November 1995, the EPA has not approved the State program. The language in section 112(j), because it refers to the effective date of a title V program in any State (and not by any State), means that the program

will apply to both the EPA "approved" and "promulgated" programs.

The title V regulations provide for approval of "interim" and "partial" programs in certain limited circumstances. The EPA believes that, because partial programs must ensure compliance with "all requirements" established under section 112 applicable to "major sources" and "new sources," and interim programs must "substantially meet the requirements of [title V]," an interim or partial program would trigger the requirements of section 112(j) for those sources covered by the interim program.

(b) *Major source.* Section 112(j) applies only to an owner or operator of a major source. Section 112(a)(1) of the Clean Air Act defines major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The requirements of section 112(j) apply to all sources that comprise a major source, but do not apply to nonmajor sources—i.e., "area sources."

The determination of whether a source is major is based on the source's "potential to emit," which is defined in subpart A of this part. A source's potential to emit is based on its capacity to emit hazardous air pollutants considering federally enforceable limits on that capacity. If a source's potential to emit is equal to or greater than 10 tons/yr of a single HAP, or 25 tons/yr of any combination of HAPs, the source is a major source. The EPA is currently developing a rule to further define a source's potential to emit for section 112 standards. This rule will also provide ways for an owner or operator of a source to establish voluntary, federally-enforceable restrictions to limit the source's potential to emit below the major source threshold. This rule will also address the requirements for major sources that subsequently reduce their emissions to less than major amounts. If a source meets conditions in subpart A of this part for limiting its potential to emit to below the major source threshold within the timeframe established in the potential to emit rule, then it will not be subject to the provisions of section 112(j) as long as the source maintains its emission status.

2. Section 63.50(b)—Relationship to State and Local Requirements

Many State and local regulatory agencies maintain regulatory programs

that involve toxic air pollutant reviews for stationary sources. This paragraph clarifies that the requirements of section 112(j) do not pre-empt any requirements of these programs that are at least as stringent as today's rule.

3. Section 63.50(c)—Retention of State Permit Program Approval

Some States may not currently have specific legislative or administrative authority sufficient to establish the case-by-case emission limitations required by section 112(j). Paragraph 63.50(c) requires that States obtain such statutory authority as a condition of retaining their part 70 permit program approval.

B. Section 6.51—Definitions

1. Terms Defined in the General Provisions

A number of terms used in the proposed rule are defined for all of 40 CFR Part 63 in subpart A of this Part. The terms defined in subpart A include:

- * * * Administrator
- * * * Area source
- * * * Effective date
- * * * Federally enforceable
- * * * Hazardous air pollutant
- * * * Major source
- * * * Permit program
- * * * Potential to emit
- * * * Relevant standard
- * * * Title V permit

The Subpart A General Provisions include a definition of "federally enforceable" which lists the types of limitations and conditions that are considered federally enforceable. The preamble to Subpart A outlines a set of principles that States and sources should follow in order to ensure practicable enforceability. The EPA believes that Subpart B should ensure that the case-by-case determinations are practicably enforceable in the same way that Subpart A does for section 112(d) and section 112(h) MACT standards. Therefore, the EPA refers the reader to the discussion of "practicable enforceability" in the preamble to Subpart A for a discussion of the kinds of requirements that the EPA would consider sufficient to ensure practicable enforceability for case-by-case MACT determinations. In addition, a more detailed discussion of the elements necessary to ensure federal enforceability is contained in section III.E. of this preamble.

2. Terms Related to Maximum Achievable Control Technology

Definitions for the following terms related to levels of control technology are included in § 63.51 of today's rule:

- * * * Maximum Achievable Control Technology
- * * * Control Technology
- * * * Maximum Achievable Control Technology (MACT) Floor
- * * * Maximum Achievable Control Technology (MACT) Emission Limitation for Existing Sources
- * * * Maximum Achievable Control Technology (MACT) Emission Limitation for New Sources

The basis for all of these definitions is statutory language contained in section 112(d) of the Act. The term "maximum achievable control technology" appears only in section 112(g) of the Act, and does not appear elsewhere in section 112. There is, however, considerable legislative history indicating that this term refers to the level of control required by section 112(d) emission standards. This term was used in this context in the House Bill, H.R. 3030. For purposes of the definitions in today's rule, the EPA assumes that "maximum achievable control technology" is a reference to the "maximum degree of reduction in emissions" language contained in section 112(d)(3). The minimum control technology requirements of section 112(d), often referred to as the "MACT floor" are cited a number of times in today's rule. To avoid repeating these requirements each time, the regulation includes a definition of "MACT floor."

3. Terms Affecting the Extent of Coverage by Maximum Achievable Control Technology

The following terms are used to describe equipment subject to a MACT determination:

- * * * Emission point
- * * * Emission unit
- * * * Emission limitation
- * * * New emission unit

An "emission point," in this regulation, is defined narrowly to refer to any individual point of release to the atmosphere. However, an individual MACT determination will often be made at once for a number of emission points. The term "emission unit" is used to refer to the collection of all emission points considered when a MACT determination is made. The term "emission limitation" retains the meaning given to it in section 302(k) of the Act.

New emission unit. The term *new emission unit* refers to an emission unit for which construction or reconstruction is commenced after the section 112(j) deadline for a relevant standard, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Act, whichever comes first. For the purposes of section 112(j), new emission

units are those emission units that trigger new source MACT requirements (see discussion of the definition of "emission unit" below). *New source* is defined in Clean Air Act section 112(a)(4) as follows:

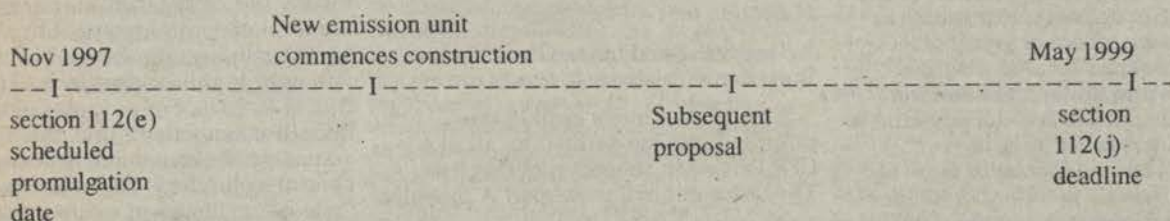
"* * * a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source."

Section 112(j) requires States to establish case-by-case MACT limitations where EPA has failed to promulgate a relevant standard, and there may be instances when a section 112(j) MACT

limitation is required for a source category for which a standard has not yet been proposed under section 112(d). Since section 112(j)(5) refers explicitly to case-by-case standards for new sources, the EPA has determined that the Act did not intend that the EPA's failure to propose a standard implies that no sources in that source category, no matter what the date of construction, could ever be considered "new." At proposal the EPA had selected the section 112(e) scheduled deadline as the date, under a section 112(j) case-by-case MACT determination, most closely equivalent to the section 112(d) proposal date for the purposes of

defining "new emission unit," because had EPA met the schedule in setting a standard under section 112(d) the proposal could not have been any later than the date in the schedule. The EPA requested comment on this definition. Three commenters supported the proposed definition. However, upon consideration of the practical concerns raised by this definition, the EPA has determined that the section 112(j) deadline would be a more reasonable date beyond which commencing construction of an emission unit would be considered "new."

The following timeline illustrates the EPA's reasoning:



Under the proposed rule, a source would have needed to know, up to 2 years or more in advance of the section 112(j) deadline, that the EPA was going to miss its scheduled promulgation deadline by 18 months. If "new source" requirements were triggered by the section 112(e) deadline, owners and operators would need to know this in order to plan what control to build in to their new emission units, and perhaps in order to apply for preconstruction review. In addition, if an owner or operator plans to construct between the scheduled promulgation date and the section 112(j) deadline, and there is a subsequent proposal (as illustrated in the timeline), then whether the emission unit will be considered new would depend upon a later event—whether the section 112(j) deadline will pass with no federal MACT standard. The EPA believes that it is not reasonable to expect owners and operators to be able to predict the likelihood of EPA missing a promulgation deadline by 18 months; nor is it reasonable to expect them to make such a prediction as much as 2 years before its occurrence.

Thus, if EPA proposes a MACT standard before the section 112(j) deadline, any emission unit for which construction commences after that proposal will be considered new. If the section 112(j) deadline is reached without EPA having proposed a standard, then an emission unit for which construction commences after the

section 112(j) deadline will be considered new. This approach removes the uncertainty raised by the possibility of EPA proposing a MACT standard during the 18 months between the section 112(e) schedule deadline and the section 112(j) deadline. The EPA believes this to be the most reasonable and equitable way to define which emission units are new for purposes of section 112(j).

Emission unit definition; applicability to new source MACT. MACT determinations must be made on a wide variety of emitting equipment at major sources in different source categories. Today's rule defines *emission unit* in a way designed to allow permitting authorities broad flexibility in designing case-by-case MACT emission limitations. This flexibility is essential because of the variety of source categories, diverse in size and complexity, that may be subject to section 112(j). A narrower definition of *emission unit* would make it difficult for permitting authorities to tailor MACT determinations to the equipment specific to a particular source category. *Emission unit* as defined in this rule is intended to be synonymous with the term "source" as used in section 112(d). Thus, the State permitting authorities implementing section 112(j) will have as much flexibility in defining *emission unit* as EPA has in defining "source." The definition of source used in section 112 originated in section 111 a number of years ago. That definition—any

building, structure, facility, or installation which emits or may emit any (hazardous) air pollutant—has been interpreted over the years to encompass a broad range of things including individual process units, production lines and entire plants.

The EPA requested comment both on the desirability of requiring or not requiring new source MACT on all new emission units, and on the question of whether new source MACT should be required only on those emission units that are in and of themselves "major" at a major source.

An approach the EPA considered, but rejected, would be to require new source MACT only on those emission units that are in and of themselves "major" at a major source—i.e. those emission units at a major source which themselves emit at least 10 tons per year or more of a single HAP, or 25 tons per year or more of a combination of HAPs. This approach generated significant comment. Some commenters disagree with this approach and support the approach taken in the rule. Many commenters support the alternative approach.

The EPA agrees with the commenters who support application of new source MACT to all constructed and reconstructed emission units. Section 112(j) is intended to stand in place of section 112(d) where EPA has missed the section 112(e) scheduled date for a category of major sources. Under section 112(d), when a MACT standard is

written for a major source category it will apply to all sources within that category. Depending on how the category is defined many of the covered sources will be a less than 10 ton portion of a major source. These are not area sources.

Many major sources will be covered by multiple MACT standards, and the portion of a major source covered by any one MACT standard may well be less than major by itself. In addition, a major source could contain several emission units that are all covered by the same MACT standard, but are separate sources that in combination exceed 10 or 25 tons but do not exceed the major source threshold individually. In contrast, area sources in the same category will not be subsets of major sources. Section 112(j) does not apply to categories of area sources.

Other commenters assert that EPA's interpretation runs counter to either the Clean Air Act itself, or to the Congressional intent behind the language in the Act. For the reasons discussed below and in the preamble to the proposed rule (58 FR 37778), the EPA disagrees with these commenters.

Prior to a missed promulgation deadline, through section 112(g) the statute clearly requires new source MACT only on constructed or reconstructed major sources. Any other equipment added to an existing major source would be a modification (unless specifically exempted from regulation by section 112(g)), and would be subject to existing source MACT levels of control. However, the language of section 112(j) is somewhat different from that of section 112(g). Section 112(j), while applying only to major sources, does not limit the application of new source MACT to new major-emitting equipment, as section 112(g) does.

The EPA believes that the standards developed through section 112(j) must anticipate and reflect the likely requirements of section 112(d) and section 112(h). The basis for the applicability of new source MACT selected is the section 112(j)(5) requirement that case-by-case MACT standards must be:

Emission limitations for the hazardous air pollutants * * * emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d).

It is the judgment of EPA that section 112(j) case-by-case MACT standards must require new source MACT to be applied to those same sources, within a

covered major source, to which a standard promulgated under section 112(d) would apply new source MACT. Therefore, it is necessary to determine what entity is considered a new source under section 112(d) for the purpose of implementing MACT standards.

Section 112(a) provides that *new source* shall mean a "stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Section 112(a)(3) gives "stationary source" the same meaning as under section 111(a), i.e. any new "building, structure, facility, or installation"; thus the term stationary source clearly is not limited to major sources under section 112(a)(3). Section 112(d) requires MACT standards to be set for "sources," and "sources" can be major, area, or portions of a major source. Once there is a section 112(d) standard in place, any new source will be required to meet new source MACT emission limitations, as defined by the standard. Thus, under section 112(j), any new emission unit that is either part, or all, of a major source will be required to meet new source MACT.

If, however, the language of section 112(g) were interpreted as dispositive of whether new or existing source MACT must be applied to any given increase in emissions, new sources within the definition in section 112(a)(4) would escape having to comply with new source MACT under section 112(j). If a MACT standard under section 112(d) may establish a definition of source that would apply to a portion of a "major source," then section 112(j) case-by-case MACT determinations would not satisfy the requirement that they be "equivalent to the limitation that would apply to such source * * *."

In addition, under this reading, major sources adding new sources that are not major by themselves could avoid new source MACT on those new sources. But if MACT is then set under section 112(d) for area sources in that category, any new area source would have to meet new source MACT, while new parts of a major source would not. This would be an anomalous result. Therefore today's rule requires new source MACT on all emission units that are constructed or reconstructed at a major source plant site.

C. Section 6.52—Approval Process for New and Existing Emission Units

Existing emission units. Section 6.52 of the rule requires that case-by-case MACT determinations for existing emission units be established through

the title V permit process. The owner or operator of an existing major source must submit a permit application for all emission units in a source category not later than 18 months after the missed promulgation date for that source category. The State must then review and approve or disapprove the permit in accordance with the procedures and principles set out in Part 70 and in § 63.55 of today's rule. Section 63.52(b)(1) of today's rule implements the requirement in section 112(j)(4) of the Act that if an owner or operator's permit application is deemed incomplete or disapproved by the permitting authority, the owner or operator has up to 6 months to resubmit and meet the requirements of the permitting authority. The final rule clarifies the intent of the Act that the owner or operator provide complete information within 6 months of the date the permitting authority "first" identifies its objections. The addition of the word "first" is intended to clarify that the applicant may not prolong the process by resubmitting an incomplete application. In order to ensure that the application indeed satisfies this 6-month deadline, applicants will probably wish to respond sooner than 6 months.

For existing emission units, the permitting authority at its discretion may require compliance as expeditiously as practicable, but no later than 3 years from permit issuance. In addition, the permitting authority may allow an extra year, on a case by case basis, when necessary for the installation of controls. This approach is consistent with section 112(j)(5), which requires the case-by-case MACT standards to ensure compliance * * * immediately for new sources and, as expeditiously as practicable, but not later than the date three years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i)."

New emission units. Section 63.52 describes the relationship of the MACT review process for new emission units to the operating program requirements pursuant to Title V of the Act Amendments. The requirements for title V permits, contained in 40 CFR part 70, were published on July 21, 1992 (57 FR 32250). For existing emission units, the approach to establishing an administrative process for determinations under section 112(j) of the Act is to rely on the title V review process as the mechanism for establishing MACT requirements. For new emission units, however, the EPA believes that reliance on the title V permit process may not be sufficient.

First, the title V requirements clearly do not require a new "greenfield" plant to apply for an operating permit until 1 year after the plant begins operation. Because the title V permit must be issued within 18 months of the application, it could be up to 30 months after commencement of operation before section 112(j) requirements would be incorporated into the permit. Second, the title V requirements do not ensure that a MACT determination will be conducted before construction. While in some cases permitting authorities with title V programs may require preconstruction reviews as part of the operating permit process, this will not always be the case.

Therefore, while for existing emission units the title V permit process is sufficiently comprehensive to handle section 112(j) reviews, the EPA believes, based upon the above considerations, that when the title V process does not occur until after construction has begun, new emission units should be subject to preconstruction or at least pre-operation review. However, the statutory language of section 112(j) does not authorize EPA to mandate either process.

While many commenters also challenged the legality of requiring preconstruction review, several others agreed with EPA's reasons, as stated in the proposed rule, in support of a preconstruction review. Commenters noted that without preconstruction review, owners and operators will not know their requirements before startup, making it more difficult for them to design equipment with controls that the permitting authority is guaranteed to approve. In addition, some permitting authorities will be deprived of the authority they need to make appropriate new source MACT determinations. In addition, it was noted that some permitting authorities will be prohibited from adopting preconstruction review programs unless they are federally mandated.

The EPA believes that most new equipment covered by section 112(j) will require some type of State preconstruction permit, for criteria pollutants if not for HAP. Although the Act does not mandate the communication of section 112(j) requirements until the eventual operating permit process, the EPA believes that it would be in the best interests of both the owner or operator and the permitting authority to resolve section 112(j) issues as part of its upfront review.

Regardless of the timing for incorporation of section 112(j) new source MACT determinations into the operating permit, there are certain

requirements that apply. The title V permit must be revised or issued according to procedures set forth in § 70.7 and 70.8, or issued as a general permit. In addition, the permit must incorporate the compliance provisions of § 70.6. If, during the EPA's review of the section 112(j) determination, it becomes apparent that the determination is not in compliance with the Act, then EPA must object to the issuance or revision of that permit.

These requirements are obviously satisfied either when part 70 requires revision to an existing title V permit before construction, or when the permitting authority otherwise requires incorporation of conditions into a title V permit as a step in the section 112(j) new source case-by-case MACT determination process. However, even when there is no formal incorporation of conditions into a title V permit before operation, subsequent additional title V review may effectively be avoided if the State's section 112(g) or optional section 112(j) process is "enhanced" to include the important title V procedures, thereby allowing for later incorporation into the title V permit by administrative amendment. (The optional procedures contained in § 63.54 of the rule are intended to provide an example of such an "enhanced" process).

Section 70.7(d) of the operating permits rule defines an "administrative amendment" to include a revision that "(i) incorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to those contained in § 70.7 and 70.8 of this Part . . . and compliance requirements substantially equivalent to those contained in § 70.6 of this part." This process of "enhancement" of preconstruction procedures was discussed in the preamble to the operating permits rule in the context of existing State new source review programs (see 57 Fed. Reg., at 32289), but was not discussed in relation to section 112(j) because the procedures associated with section 112(j) determinations had not yet been articulated. However, the language of § 70.7(d)(v) would allow for use of administrative amendments for an enhanced preconstruction review process, and the EPA believes such use is clearly within the intent of that provision.

Enhancement of the preconstruction review process may be partial only, incorporating some elements of the required part 70 review or compliance provisions in the preconstruction

review process itself, with the remaining elements occurring during the title V process. For instance, public review of the MACT determination that meets the requirements of § 70.7(h) need not be repeated at the time of incorporation into the title V permit. However, for the administrative amendment procedures to be available for determinations that have been through an enhanced process, the public, EPA and affected States must have had the opportunity to review all aspects of the MACT determination, including any compliance provisions required under § 70.6. Thus, public review during the preconstruction review process would not suffice for purposes of title V if the process did not specify the application of compliance provisions substantially equivalent to those in § 70.6, including monitoring, reporting, recordkeeping, and compliance certification.

Finally, § 6.52(d) of today's rule establishes that new emission units must comply with case-by-case MACT determinations at permit issuance. This requirement is unchanged from proposal. At proposal the EPA solicited comment on the implementation consequences for sections section 112(j) and section 112(d) when preconstruction review is not required, and on the likely consequences of the lack of an adequate enforcement mechanism at the federal level for compliance earlier than permit issuance. Commenters noted the need to prevent situations in which some sources might have to retrofit in response to subsequent rulemaking under section 112(d). Commenters also pointed out the likely negative effect on the public of the compliance delays inherent in section 112(j) for new emission units, as well as the inability of some permitting agencies to adopt requirements more stringent than mandated by the federal government.

In addition, precedent across the board in federal air regulation requires new sources to comply with control requirements upon startup. The EPA believes that new emission units should undergo preconstruction or pre-operation review. However, the EPA believes that the language of section 112(j)(5), which specifies that "[n]o such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources," does not give the Agency authority to require compliance with case-by-case MACT by new emission units until a permit is issued.

The EPA believes that, especially when project lead time is sufficient, that

the best approach would be for a permitting authority to provide for an "enhanced" preconstruction review process that would assure the source that it would be in compliance with section 112(j). Because the "enhanced" review would yield terms and conditions that could be incorporated into the title V permit by administrative amendment, "permit issuance" would thus be accomplished upon startup rather than 12-30 months later. In this case, the source would be in compliance with federally enforceable case-by-case MACT at the time of administrative amendment to its title V permit.

Subsequent changes to a major source. The EPA believes that section 112(j) emission limitations apply to subsequent changes made at major sources already complying with case-by-case MACT limitations under section 112(j), when EPA has not promulgated a final standard for the source category under section 112(d). The EPA requires, in subpart A of this Part, that subsequent changes to a major source already complying with a section 112(d) or (h) standard shall comply with established MACT emission limitations for the source to which changes are made. Therefore requiring subsequent changes to portions of major sources already meeting case-by-case MACT emission limitations under section 112(j) satisfies the section 112(j)(5) statutory requirement that case-by-case MACT determinations under section 112(j) be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection(d)." Emission limitations governing those changes would be incorporated into a source's title V permit according to procedures established pursuant to title V.

The EPA requested comment on this approach, as well as on the alternative approach of treating section 112(j) as a one time permitting requirement applicable 18 months after EPA fails to set a relevant MACT standard. This would require subsequent changes at major sources with section 112(j) permits to comply only with section 112(g). The EPA received a few comments on this issue, most of which agree with EPA's approach, and one which asserts that prior determinations under section 112(g) should be deemed to satisfy section 112(j). The EPA believes that determinations made under section 112(g) that require MACT control should be considered by the permitting agency to be sufficient to satisfy the control requirements of section 112(j). Therefore the EPA retains the interpretation contained in the

proposed rule. (See also the discussion of potential differences in section 112(g) and section 112(j) requirements in section IV. A. of this preamble).

General permits. The EPA recognizes that there are cases for which sources would prefer to minimize delays in the process, particularly for operations which change relatively frequently, and when the owner or operator is willing to control emissions from those changes with technologies that could be recognized as best available controls (i.e. those controls which achieve "the emission control that is achieved in practice by the best controlled similar source" (section 112(d)(3) of the Act)). General permit procedures, outlined in 40 CFR 70.6(d), could be available for such situations.

The general permit would have application for section 112(j) determinations when the permitting authority is able to make a presumptive determination of MACT for a given type of source. The general permit would have to set forth the controls required by Part 70. Once the general permit is issued, application of the MACT determination to a particular emission unit would involve merely a determination that the emission unit falls within the source category covered by the general permit. In this way, a single permitting process could be used to address the section 112(j) requirements for a number of facilities, rather than conducting a separate process for each facility. Such a general permit process would not relieve the owner or operator from the obligation of submitting an "application" by the section 112(j) deadline. The EPA envisions, however, that permitting authorities could provide guidance to the affected facilities, before the section 112(j) deadline, of its intention to use the general permit process such that the burdens of the application are minimized.

As discussed in the preamble to the operating permit regulation, general permits may be issued to cover discrete emissions units at permitted facilities. 57 Fed. Reg., at 32279. While a general permit cannot be used to modify the terms of an existing title V permit, it may be issued to cover a change at an existing plant, such as addition of a new emission unit, that would otherwise be eligible to apply for a new individual permit. In that case, the requirements of the general permit could be incorporated into the permit for the facility at permit renewal.

Several commenters agree that using the general permit procedures is a good idea, in order to streamline MACT determinations under section 112(j).

The EPA agrees that general permits could be used both for existing and new emission units.

Area sources that become major sources. Today's rule states that section 112(j) requirements apply to all major sources in a source category for which EPA has missed its scheduled promulgation deadline. Implicit in that requirement is the assumption that the requirements of section 112(j) apply to area sources that increase their emissions or their potential to emit such that they become major sources after the section 112(j) deadline.

Subpart A of this part, recently promulgated, explicitly establishes, for MACT standards under section 112(d) or (h), that area sources which increase their emissions, or their potential to emit, such that they become major sources after the applicable date of a relevant standard, are subject to the requirements of that standard. Therefore EPA has added § 63.52(f)(1) to today's rule to clarify that the requirements of section 112(j) likewise apply to area sources that increase their emissions or their potential to emit such that they become major sources after the section 112(j) deadline.

One commenter requests clarification on the status of area sources which, after the section 112(j) deadline, become major sources when EPA determines that a "lesser quantity" of emissions defines "major source" for that source category (see section 112(a)(1)). Therefore EPA has added § 63.52(f)(2) to today's rule to clarify that the requirements of section 112(j) apply to all major sources at the point at which they are determined to be "major sources" under section 112(a). These sources are required to submit permit applications within 6 months of becoming major sources. Given the relative significance of the regulation these sources, the EPA believes that requiring permit applications within 6 months is reasonable.

As discussed previously, the rule generally treats emission units as "new" if constructed after the section 112(j) deadline. However, in the case where that area source becomes major because the EPA has set a lesser quantity emission rate after the section 112(j) deadline for the relevant source category, the EPA recognizes that it would be inequitable to require new source MACT for such an emission unit at an existing area source plant site. It would be difficult for any source constructed at an earlier date to immediately meet new source MACT upon permit issuance. Such a position would require sources to retrofit to a new source MACT level of control,

despite the fact that, at the time of a MACT proposal or the section 112(j) deadline, those sources would not have any reason to anticipate that section 112(j) would apply. Therefore today's rule has been clarified to provide that, where a source is not subject to section 112(j) on the section 112(j) deadline, but becomes subject to section 112(j) at a later date by becoming a major source, new source MACT will be limited to those emission units for which construction or reconstruction has commenced after the date that the source becomes major. This avoids the inequitable outcome of requiring such sources to retrofit new source MACT.

The rule provides two exceptions to this approach. Consistent with subpart A (59 FR 12408), if the owner or operator wishes to construct or reconstruct an emission unit that would cause the plant site to now become a major source, that emission unit would be treated as "new." Or, if a source, which has been constructed or reconstructed after the section 112(j) deadline and which has been an area source by virtue of a limitation on its potential to emit, becomes a major source by virtue of a relaxation of its emission limitation, then the emission units whose emission limitations increase would be treated as "new." (This latter exception is intended to be consistent with subpart A of this part, and with provisions in § 52.21(r)(4) in the criteria pollutant program). For these reasons, the definition of new source says "... except as provided for in § 63.52(f)(1)," and § 63.52(f)(1) clarifies these exceptions.

D. Section 63.53—Application Content for a Case-by-Case MACT Determination

Section 63.53 of today's rule describes the information the owner or operator is required to provide with an application for a MACT determination. These information requirements are designed to identify the emission units to be controlled and to demonstrate that MACT will be met.

E. Section 63.54—Preconstruction Procedures for New Emission Units

Section 112(j), when read together with title V, presents certain ambiguities which must be resolved in this rulemaking. Section 112(j) requires case-by-case determinations of MACT for new as well as existing sources. Section 112(j)(5) directs that case-by-case MACT is to be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection(d)." The timing for application for new sources subject to

any standard promulgated under section 112(d) is in turn articulated in section 112(i)(1), which prohibits the construction of a new major source or reconstruction of an existing major source except when there has been a determination that the construction or reconstruction will meet the MACT standard.

However, the timing of this determination for new sources under section 112(j) is different than the timing required by the statute for section 112(d) standards. Section 112(j) requires that the permit containing the case-by-case determination of MACT be "reviewed and approved or disapproved according to the provisions of section 505" (section 112(j)(4)) and issued "pursuant to Title V," (section 112(j)(5)). This conflicts with a requirement for preconstruction or pre-operation review for new sources subject to only section 112(j), because title V does not give EPA discretion to require applications for sources newly subject to the title earlier than 12 months after commencing operation. (Section 503(c)). (States may, however, opt to do so). Because the Part 70 permit must be issued within 18 months of the application, it could be up to 30 months after operation before section 112(j) requirements would be incorporated into the title V permit.

While several commenters state that section 112(j) MACT determinations should be subject to preconstruction review, a number of others argued that section 112(j) contains no authority for preconstruction review. A number of commenters addressed the relationship of section 112(j) to section 112(g). Several of these commenters argued that both sections should be reviewed, and the more stringent requirement applied in each case. Other commenters stated that the two sections should be applied consistently.

The EPA agrees that section 112(j) determinations for new sources should be subject to preconstruction or pre-operation review. However, the Agency acknowledges, as pointed out by other commenters, that section 112(j) does not provide the EPA with independent authority to require such review. Therefore, in the final rule EPA is not changing its proposal that section 112(g) provide the mechanism for review for modifications to major sources and construction of new major sources. An optional preconstruction review process is provided in this rule for the benefit of new emission units not covered by section 112(g).

As noted above in Section III.C. of this preamble, the EPA believes that sources subject to case-by-case MACT

determinations should undergo upfront review. While in some cases States may require review under the Part 70 program to occur in the preconstruction phase (or an "enhanced" preconstruction process deemed equivalent), the Act does not authorize EPA to mandate this result. It follows that, while title V is sufficiently comprehensive to handle the section 112(j) review process for existing emission units, it is not broad enough in its mandatory coverage to implement section 112(j) for new emission units. EPA believes that the preconstruction or pre-operation review requirements for control technology determinations under section 112(g) will be applicable to many new sources subject to section 112(j). For example, construction of all new major sources, and all new emission units constructed as part of a modification to an existing major source, would require preconstruction or pre-operation review under section 112(g). Permitting authorities also have the option of establishing an administrative process for preconstruction or pre-operation review of new emission units subject to section 112(j), to cover those emission units not subject to the requirements of section 112(g). In addition, section 112(j) requirements should be considered for new emission units requiring other preconstruction permits under a permit authority's overall air quality program.

As an alternative to relying on the upfront review procedures of section 112(g) for new major sources, EPA had considered relying on the language of section 112(i)(1) to require preconstruction review of new sources under section 112(j). However, section 112(i)(1) requires preconstruction review only for major-emitting sources. Such major-emitting sources would already be required to undergo preconstruction review under the requirements of section 112(g). Therefore adding a requirement for preconstruction review under section 112(j) based on section 112(i)(1) adds nothing to the process. For this reason EPA rejected reliance on section 112(i)(1) authority.

Section 63.54 of today's rule describes an optional preconstruction review process for new emission units not required to undergo upfront review under section 112(g). Permitting authorities need not provide this additional preconstruction review opportunity. Moreover, since the preconstruction review process set forth in § 63.54 is optional, permitting authorities may provide for a different process. The procedures set forth in § 63.54 contain the elements EPA

believes to be necessary for an "enhanced" review process that can be incorporated into the title V permit by administrative amendment. One important aspect of such "enhanced" procedures is to ensure Federal enforceability. In addition to the discussion in this preamble, the preamble to subpart A of this part discusses the kinds of requirements that the EPA would consider sufficient to ensure federal enforceability for MACT determinations under Clean Air Act sections section 112(d) and (h); the EPA believes that these same requirements would ensure federal enforceability for case-by-case MACT determinations

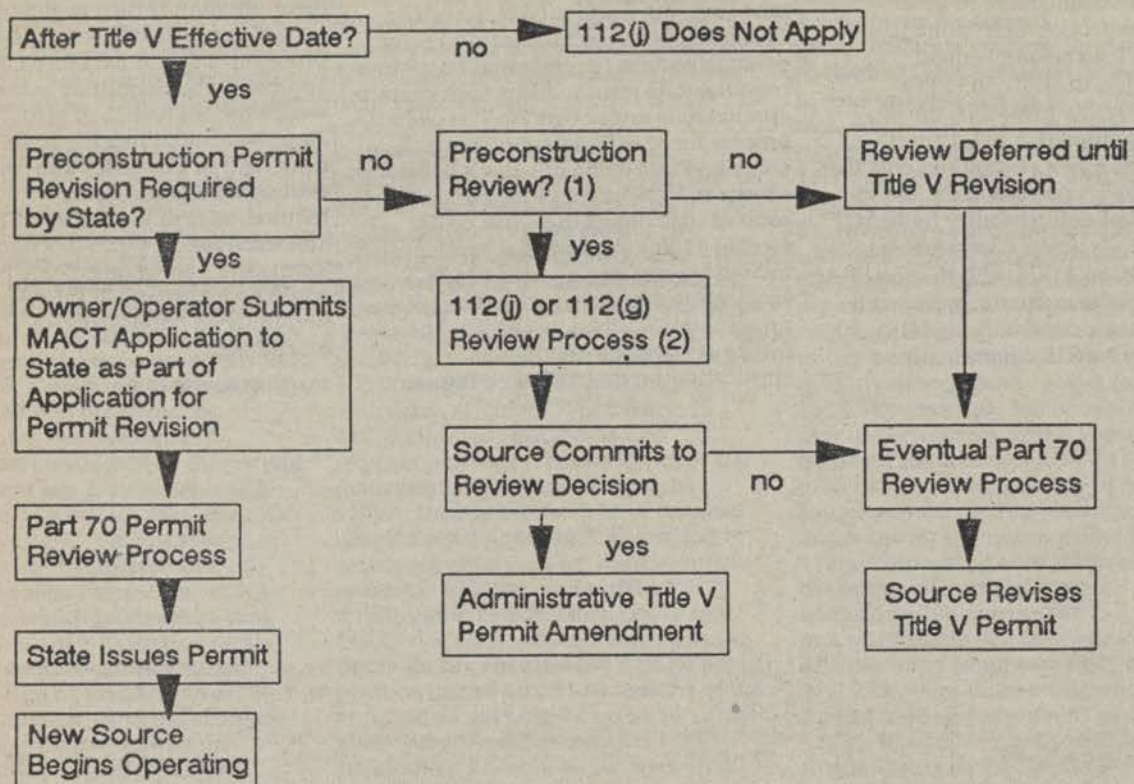
under section 112(j), and refers the reader to that discussion.

The EPA believes that the majority of new emission units subject to section 112(j) will be subject to section 112(g) preconstruction or pre-operation review requirements prior to filing their permit applications under Part 70. The overall process for MACT determinations contained in § 63.54 of today's rule is shown in Figures 1 and 1a. For those sources not subject to review under section 112(g), the optional "enhanced" review process begins with a MACT application consistent with the principles described in § 63.55. The owner or operator provides an application for a MACT determination

to the permitting authority. The contents of this application are outlined in § 63.53. This application for a MACT determination is then evaluated by the permitting authority according to procedures described in § 63.54(b). If approved, the permitting authority would issue a Notice of MACT Approval containing the basic elements described in § 63.52(c). Provisions dealing with compliance with the requirements of the Notice of Approval are described in § 63.54(c) through (g). Terms and conditions of this Notice could be incorporated into the operating permit by an administrative amendment.

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ADMINISTRATIVE PROCESS FOR NEW SOURCES



(1) Preconstruction Review May Be Required under 112(g) for Some Sources or May Occur at the Applicant's Request

(2) 112j Review Process Detailed in Figure 1a

Figure 1

OPTIONAL 112J REVIEW PROCESS FOR NEW SOURCES

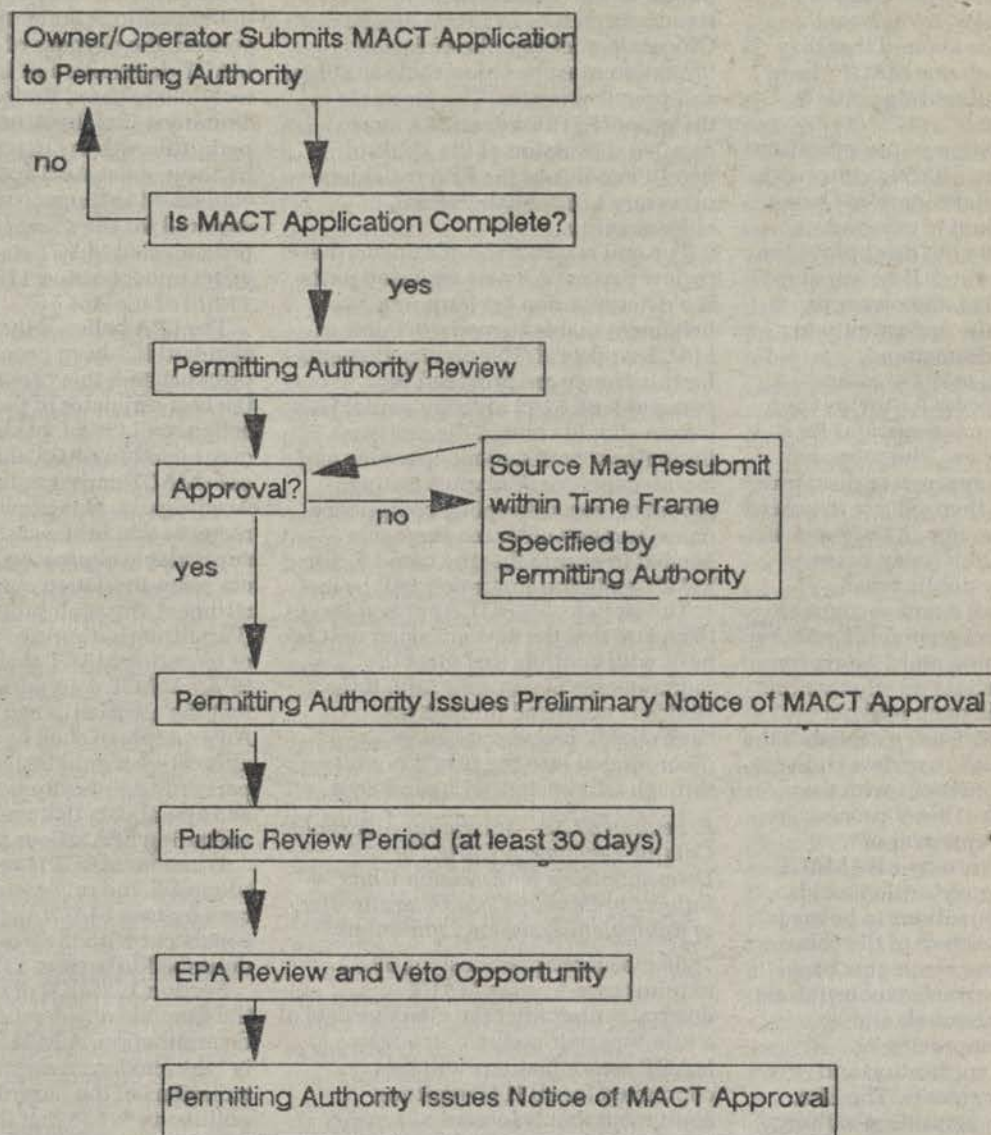


Figure 1a

The EPA believes that there are substantial implementation advantages to upfront review for emission units subject to section 112(j), as noted above in section III.C. of this preamble. Without such review, owners and operators cannot be assured that they will meet a "new source MACT" level of control when submitting a title V permit application.

The preconstruction or pre-operation process outlined in § 63.54 begins with a completeness determination. Once a complete application is received, approval or an intent to disapprove the application is required. If an intent to disapprove is issued, the owner or operator is given the opportunity to provide further information.

Section 63.54(b) establishes an administrative process for reviewing a request by an owner or operator for a MACT determination. The proposed decision to either approve or disapprove the application is then subject to public review. (See discussion in the proposed rule at 58 FR 37778.) Today's rule would provide for public review through issuance of a notice containing all the relevant background information about the application and 30 days for the public to comment on whether the application should or should not be granted. Section 63.54(d) establishes the opportunity for EPA to review and veto the application consistent with the requirements of the title V process. In order to expedite approval of noncontroversial case-by-case MACT determinations, today's rule would allow such determinations to be made final following the close of the comment period if no adverse comments have been received. If adverse comments are received, a final notice should be published either approving or disapproving the application and addressing the comments. The EPA envisions that the permitting authority would exercise its discretion in determining, where warranted, that a public hearing should be held.

Emission limits that are federally enforceable include limits on the allowable capacity of the equipment; requirements for the installation, operation and maintenance of pollution control technologies; limits on hours of operation; and restrictions on amounts of materials combusted, stored, or produced. These limitations or conditions should be practicably enforceable and ensure adequate testing, monitoring, and recordkeeping to demonstrate compliance with the limitations and conditions. These conditions are based on the five criteria for Federal enforceability established in 40 CFR parts 51 and 52 (54 FR 27274).

Part of the criteria for conferring Federal enforceability to a State or locally established emission limitation requires the emission limitation to undergo some public scrutiny and be kept in standardized files in EPA's Regional Offices. In addition, the emission limitation must be enforceable as a legal and practical matter. The preamble to the proposed rule contains a more detailed discussion of the kinds of permit conditions the EPA considers necessary to establish Federal enforceability.

The end result of the administrative review process for new emission units is a determination set forth in a document that is termed a "Notice of MACT Approval." Necessary elements for this Notice are provided in paragraph 63.52(c) of today's rule. This Notice should contain the emission limitations, notification, operating and maintenance, performance testing, reporting, recordkeeping, compliance dates, and any other requirements needed to ensure that the case-by-case MACT emission limitation will be met.

The Notice of MACT Approval serves to ensure that the new emission unit is built with controls that meet the requirements of section 112(j). If the Notice is approved through an "enhanced" process, it can be incorporated into the title V permit through administrative amendment.

F. Section 63.55—Maximum Achievable Control Technology (MACT) Determinations for Emission Units Subject to Case-by-Case Determination of Equivalent Emission Limitations

As discussed previously, § 63.52 requires case-by-case MACT determinations after the effective date of a title V permit program in a State. MACT determinations will be conducted for all HAP-emitting equipment that is located at a major source and is in a source category for which the Agency has failed to promulgate a relevant maximum achievable control technology (MACT) standard within 18 months of the scheduled promulgation date. This section of the preamble discusses principles and procedures for making these MACT determinations. These include procedures needed to establish a MACT emission limitation and a corresponding MACT control technology. In the rule, the overall process for MACT determinations is outlined in § 63.55.

The primary emphasis is on the procedures for case-by-case MACT determinations when no applicable MACT standard has been proposed by the EPA. The procedures for

determinations after MACT standards have been proposed are more straightforward.

Section 63.55 contains general principles that would govern MACT determinations under today's rule. In general, the purpose of a case-by-case MACT determination is to develop technology-based limitations for HAP emissions that the Administrator (or a permitting agency to whom authority has been delegated) approves as equivalent to the emission limitations required for the source category if promulgated MACT standards were in effect under section 112(d) or section 112(h) of the Act.

The EPA believes that if a MACT standard has been proposed, but not yet promulgated, this proposed standard is the best estimator of the Agency's final action, and therefore should be considered in establishing a case-by-case MACT emission limitation. Accordingly, paragraph 63.55(a)(1) requires that in the absence of a supportable alternative, the equivalent emission limitation should be at least as stringent as any such proposed standard. (Permitting authorities retain the option of requiring MACT that is different from EPA's MACT determination, provided that the alternative can be supported. An example of such a supportable alternative would be the case where a permitting authority possesses additional data that would support amending EPA's floor finding.)

When no MACT standard has been proposed, the rule requires that the case-by-case MACT determination be consistent with the overall requirements described in section 112(d) of the Act.

Section 112(d)(3) of the Act describes the general considerations for a MACT determination. A MACT level of control is "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing sources in the category or subcategory * * *." This paragraph of the Act continues to describe a number of items that might be considered in designing MACT standards such as material substitutions, enclosure of processes, capture and control of emissions, design and work practice standards, and operational standards. This list of items is included in the definition of "control technology" in § 63.51 of today's rule.

Section 112(d) also imposes certain minimum requirements on the determination of "maximum achievable

control technology." Collectively, these minimum requirements are defined in the rule as the "MACT floor."

For existing emission units, the MACT floor for the case-by-case determination, consistent with section 112(d) of the Act, is an emission limitation equal to the average emission limitation achieved by the best performing 12 percent of existing sources in the category for categories or subcategories with 30 or more sources, or the average emission limitation achieved by the best 5 sources for categories with fewer than 30 sources.

In rules currently under development, the EPA is considering two interpretations of the statutory language concerning the MACT floor for existing sources. One interpretation groups the words "average emission limitation achieved by" the best performing 12 percent. This interpretation places the emphasis on "average." It would correspond to first identifying the best performing 12 percent of the existing sources, then determining the average emission limitation achieved by these sources as a group. Another interpretation groups the words "average emission limitation" into a single phrase and asks what "average emission limitation" is "achieved by" all members of the best performing 12 percent. In this case, the "average emission limitation" might be interpreted as the average reduction across the HAP emitted by an emission point over time. Under this interpretation, the EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the lowest. This interpretation would correspond to the level of control achieved by the source at the 88th percentile if all sources were ranked from the most controlled (100th percentile) to the least controlled (1st percentile).

The EPA has proposed to adopt the first interpretation and has solicited comment in other rulemakings on its interpretation of "the average emission limitation achieved by the best performing 12 percent of existing sources" (section 112(d)(3)(A) of the Act). The guidance document, MACT Determinations under Section 112(j) (EPA-450/3-92-007a), explains how a MACT floor might be determined using EPA's proposed interpretation. Should the EPA adopt a different methodology for determining the MACT floor, the guidance document will be amended to explain this approach.

The MACT floor for existing sources also takes into account sources achieving the "lowest achievable emission rate" (LAER) as defined for the

criteria pollutant new source review program under section 171 of the Act, and excludes these limitations from the floor calculation for sources who have achieved LAER within 18 months before proposal or within 30 months before promulgation of a standard. The EPA interprets the "best performing 12 percent" to mean the best performing 12 percent of sources in the United States, because all sources in each category are in the United States. The phrase "in the United States" is added to the existing source MACT floor definition in order to clarify that territories and possessions of the United States are included.

When a MACT floor has been determined by EPA or the permitting authority, the rule requires that the MACT emission limitation achieve an equal or greater level of control than that MACT floor. In determining whether to require a MACT emission limitation that achieves a level of control greater than the MACT floor, the permitting authority should consider the costs, non-air quality health and environmental impacts and energy requirements of achieving that level of control. (See section 112(d)(2) of the Act).

For new emission units, the MACT floor for a case-by-case MACT determination, consistent with section 112(d), is the level of control that is achieved in practice by the best controlled similar source. The EPA believes that the legislative history of section 112 suggests that the "best controlled similar source" could be located outside of the United States. See, Statement of Senator Durenberger, Cong. Rec. S. 17239 (October 26, 1990). The definition of MACT floor for new source MACT is therefore not restricted to sources in the United States, but could instead be based on a technology known to be used in practice on a similar source located anywhere.

The Act states that "the maximum degree of reduction that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as defined by the Administrator." The Act does not specifically define the term "best controlled similar source." In addition, unlike for existing sources for which the Act states, "the average emission limitation achieved by the best performing 12 percent of the existing sources * * * in the category or subcategory for categories or subcategories with 30 or more sources," the Act does not specifically indicate that the determination of the best controlled similar source should be

limited to sources within that same source category. The guidance document "MACT Determinations under Section 112(j)" provides a detailed discussion of the criteria that should be used to determine if a source is "similar."

The EPA believes that because the Act specifically indicates that existing source MACT should be determined from within the source category, and does not make this distinction for new source MACT, that Congress intends for transfer technologies to be considered when establishing the minimum criteria for new sources. The EPA also believes that the use of the word "similar" provides additional support for this interpretation. The EPA believes that Congress could have explicitly restricted the minimum level of control for new sources, but did not. The use of the term "best controlled similar source" rather than "best controlled source within the source category" suggests that the intent is to require a consideration of transfer technologies when appropriate.

The EPA believes that there will be cases when such technology transfers are entirely reasonable. For example, suppose that the best controlled tank within a source category did not have state-of-the-art controls. Yet, tanks from outside the source category storing similar organic liquids use state-of-the-art controls vented to an emission control device. The EPA believes that such tanks are clearly "similar" within the language of section 112(d). The EPA also believes that the Act does not compel all such technology transfers in all cases, and that emission types and the ability to install such controls are strong factors in determining when sources should be considered similar. For example, within source category X, spray booths tend to be uncontrolled due to gas streams with low concentrations and relatively high airflows. The EPA does not believe that controls from another category should be considered in determining the best controlled similar source when emissions from that category's spray booths are of high concentration and low airflow. The emissions from these sources are clearly not similar. However, if it is technologically feasible, these same controls could be considered in establishing the new source level of control if consideration is given to cost, non-air quality health and environmental impacts and energy requirements.

Subcategorization

When the notice of initial list of categories of sources under section

112(c)(1) of the Act was published in the *Federal Register* (57 FR 31579), the EPA listed broad categories of major and area sources rather than narrowly defined categories. The EPA chose to establish broad source categories at the time the source category list was developed because there was too little information to anticipate specific groupings of similar sources that are appropriate for defining MACT floors for the purposes of establishing emission standards. During the standard setting process, the EPA may find it appropriate to further divide categories to distinguish among classes, types and sizes of sources, as the Act provides.

The lack of subcategorization and broad nature of the source category may pose some difficulty in establishing a case-by-case emission limitation. The source category list contains categories that will regulate more than one process type. It may be appropriate to consider all process and emission units as one source when determining the MACT floor level of control; or, after gathering information on the source category, the EPA may find that, where there are basic technological differences between different types of processes or emission units, grouping all units into one source category is inappropriate and a more accurate and realistic MACT floor finding can be made by subcategorizing the industry. Criteria to consider include air pollution control differences, process operation (including differences between batch and continuous operation), emission characteristics, control device applicability and costs, safety, and opportunities for pollution prevention.

Several commenters encouraged EPA to further subcategorize the source category list for the purposes of case-by-case MACT determinations. While this option may provide for the greatest consistency in MACT determinations from all permitting authorities, the feasibility of this option is questionable. The EPA did not subcategorize source categories because there was insufficient information to properly characterize each source category at the time the source category list was developed under section 112(c)(1). Although additional information may be collected for a given category before the section 112(j) deadline, such information may not always be sufficient to support subcategorization.

Information burden/MACT floor finding. A significant issue for this rulemaking is how to avoid placing unmanageable information-gathering burdens on sources and permitting authorities while ensuring that emissions limitations under section

112(j) are equivalent to standards that the EPA would have issued.

Commenters raised a variety of concerns about the resource burden, legality, and sensibility of requiring each individual source to provide its own MACT floor determination in its permit application.

Because all section 112(j) MACT determinations occur for a particular source category within a limited time frame, the EPA agrees that it would be duplicative and burdensome for each individual source to initiate a MACT floor finding, and that it would be more efficient and consistent for EPA or permitting agencies to determine the MACT floor.

In addition, consistent MACT determinations across sources are in the interests of both sources and permitting agencies. MACT determinations would be more likely to be at least as stringent as the eventual section 112(d) standard if either EPA or the permitting agency, as opposed to each individual source, provided the initial floor analysis. If the MACT floor is not determined consistently under section 112(j), then chances increase that some sources would install controls under section 112(j) that do not achieve an emission limitation equivalent to eventual section 112(d) requirements. These sources would then be required later to retrofit the emission unit with different controls when the section 112(d) MACT standard is eventually promulgated (once the compliance extension provided for in § 63.56 has expired).

If section 112(j) requirements are triggered, the EPA anticipates that a substantial amount of information on the source category will have been collected, allowing EPA to conduct a MACT floor analysis. When it appears that the section 112(j) requirements will take effect, the EPA intends to make the findings of this analysis available to the public. For example, the floor determination may be readily available in EPA-developed Background Information Document (BID). The EPA believes that for such cases it would be reasonable to expect that such a BID would be taken into consideration in establishing a case-by-case MACT emission limitation. Regardless of the format in which the MACT floor finding is presented, the EPA expects that its finding would include the EPA's view of the definition of source or emission unit, as well as a delineation of applicable subcategories. However, nothing in today's rule should be read to diminish the discretion of the permitting authority to use its own floor finding, if the permitting authority can present evidence for a MACT floor finding different from that which the

EPA has determined. Such evidence could be, for example, data provided by affected owners or operators that supports a correction to the EPA's MACT floor finding.

Although the EPA believes that it holds the greatest responsibility for making MACT floor findings and MACT determinations available in cases where the requirements of section 112(j) are triggered, the EPA must still provide for those instances in which a MACT floor determination will not be available at the time of the section 112(j) deadline. The EPA agrees with commenters who argue, as outlined above, that in such cases the burden for making MACT floor findings should rest with the permitting agency, not the individual applicant. (In such cases, the EPA may still have collected a great deal of information on the industry, which the EPA anticipates sharing with permitting agencies).

Section 63.55(a)(3) provides that if neither the EPA nor the permitting authority makes a MACT floor finding by the section 112(j) deadline, then the source shall submit a permit application, by the section 112(j) deadline, that will be considered complete if it contains all relevant information on emissions and controls (as set out in § 63.53(b)(1)-(9)), but no MACT floor finding or MACT determination. Section 63.55(a)(3)(i) adds that the source may choose to include a recommended MACT determination in its permit application.

Section 63.55(b) provides that the source's final permit must contain a MACT determination which, based on information "available to or generated by" the permitting authority, is at least as stringent as the MACT floor. In cases where a floor has not been established by the section 112(j) deadline by the EPA, the EPA believes that the data collected in the permit application process, in combination with information already collected by the EPA, can be used to establish minimum requirements for permits. The EPA envisions that permitting agencies can share information received in these applications, and that such information will be reported to EPA's national database. In addition, information generated by industry trade groups and the public may be of assistance.

The proposed rule contained a requirement for permitting authorities to submit copies to the Administrator of all Notice of MACT Approvals or Title V permits within 60 days of issuance. The EPA received many comments affirming the need for a mandatory reporting requirement to a National database. Commenters believe this is necessary to assure that the information used to

determine the MACT floor is representative of the full range and frequency of controls achieved by sources in the category or subcategory. The EPA agrees that information should be submitted to the Administrator to facilitate information exchange between the permitting agencies making section 112(j) MACT determinations. However, the EPA believes that this information would be most useful if received before issuance of the permit or Notice of MACT Approval. Therefore, § 63.55(c) has been changed to require owners or operator to provide, to the Administrator, an additional copy of any Notice of MACT Approval or title V permit submitted to a permitting authority to comply with the requirements of this rule.

The EPA considered requiring that, in each permit application, the owner or operator would make a control technology recommendation evaluating the impacts of alternative control levels and evaluating whether, in its judgement, the recommended control technology achieves emission reductions equal to or greater than the MACT floor. The EPA is concerned that, while such a requirement would satisfy the requirements of the Act, it may be overly burdensome to require each affected owner to prepare a separate analysis of costs, environmental impacts, etc., needed for such a recommendation.

In today's rule, owners and operators are strongly encouraged to provide such recommendations at the time of the application, but are not required to do so. At a minimum, however, the owner or operator is required to submit information on HAP emissions and current controls for each emission point, as well as any additional information deemed necessary by the permitting authority to evaluate control alternatives.

The EPA wishes to clarify that the requirements in § 63.53 (b)(8) and (b)(9) to list emission rates is intended as background information to enable the permitting authority to identify the pollutants requiring MACT controls. The EPA recognizes that there is often a significant effort required to obtain precise estimates of HAP emission rates and speciation. The EPA does not intend in this paragraph to require a greater level of detail than is necessary for evaluating applicability and emission control issues.

The EPA envisions, in cases where a MACT determination has not been provided by the Administrator, that a multi-stage process will be involved before issuance of the final title V permit. For the first stage, affected

owners and operators would submit an initial application identifying the current level of control and data pertinent to the evaluation of control alternatives. Permitting authorities would review the application and provide the owner or operator with feedback on any additional information required. The owner or operator would be required to supply complete information no later than 6 months from the date of the initial application. For the second stage, the permitting authority would, in tandem with other permitting authorities, determine an emission limitation for each application that represents a MACT emission limitation for each emission unit. In the last stage, the emission limitation would be formally incorporated into the permit through the normal title V processes (public review, etc.)

G. Section 63.56—Requirements After Promulgation of a Subsequent Standard Under Section 112(d).

Section 63.56 of today's rule sets out requirements for incorporating subsequent standards into an operating permit after the owner or operator has submitted a permit application for a section 112(j) case-by-case MACT determination, or after a case-by-case MACT determination has been made under section 112(j). Section 63.56 implements the specific requirements of subsection 112(j)(6) of the Act.

Section 63.56 provides, as required in the Act, that if the EPA promulgates a section 112(d) standard for a source category before approval of a section 112(j) permit application for a source in that source category, then the permit must reflect the section 112(d) standard. New sources must comply upon startup with the section 112(d) rule except that, if the MACT standard is more stringent than the proposal, sources commencing construction or reconstruction between proposal and promulgation may comply with the proposal for 3 years, then meet the final MACT standard.

If EPA promulgates a section 112(d) standard after issuance of a section 112(j) permit for a source in the relevant source category, then the permit must be revised upon renewal to reflect the section 112(d) standard. However, the compliance period must be no longer than a total of 8 years from the initial section 112(j) compliance date, or the section 112(d) promulgation date, whichever is earlier.

Paragraph 63.56(c) clarifies a permitting authority's responsibilities when a case-by-case MACT standard is more stringent than a subsequent section 112(d) standard, and a permit containing that case-by-case standard

has been issued. In that instance, the permitting authority is not required to revise the permit to reflect the less stringent section 112(d) standard, but may presume that the more stringent case-by-case determination satisfies the requirements of both section 112(j) and section 112(d). The EPA believes that nothing in section 112 of the Clean Air Act requires pre-emption of these more stringent State standards. The initial responsibility for determining whether a case-by-case MACT determination is more stringent rests with the permitting authority. The permitting authority should expect that EPA, in reviewing the permit at permit renewal, would look to the criteria in subpart E for guidance in approving this determination.

IV. Discussion of the Relationship of Today's Rule to Other Requirements of the Act

A. Section 112(g) Requirements for Constructed, Reconstructed, and Modified Major Sources; and Subsequent Standards Under Section 112(d) or Section 112(h)

States and sources implementing the requirements of section 112 of the Clean Air Act need to understand the potentially complex relationships among several interlocking provisions. At proposal the EPA requested comment on different interpretations of the relationship among the requirements of sections 112 (d), (g) and (j).

Internal Consistency

As discussed in section II.C. of this preamble, EPA's primary goal is to create as much consistency as possible between case-by-case MACT determinations under section 112(j) and implementation of subsequent section 112(d) standards for those same source categories. In addition, the Agency desires to rationalize the section 112(j) provisions with the section 112(g) provisions requiring case-by-case MACT determinations for constructed, reconstructed, and modified major sources. While some of the specific substantive requirements of section 112(g) differ from the substantive requirements of section 112(j) and section 112(d), the EPA intends to ensure the greatest possible consistency among sections 112 (d), (g), and (j) provisions. This discussion outlines EPA's preferred approach in implementing section 112(g) and achieving a consistent relationship across sections 112(d), 112(g), and 112(j). EPA recently proposed a rule implementing section 112(g) and a final determination on the relationship

between these provisions will be made in that rulemaking.

One fundamental principal guiding the design of regulations under all three provisions is that case-by-case maximum achievable control technology requirements under section 112(g) are applicable only until the effective date of a section 112(j) or section 112(d) standard for a source category. After the effective date of a section 112(j) or a section 112(d) MACT standard, any more stringent emission limitations required under section 112(j) or section 112(d) supersede the specific emission limitations required under section 112(g).

The EPA considered an alternative approach, i.e. the finding that section 112(g) governs all changes and additions of new emission units at existing sources whether or not a section 112 (d) or (j) standard exists. This issue generated numerous comments. Some commenters argue that the requirements of section 112(g) should not be superseded when a MACT emission limitation is established under either section 112(j) or section 112(d) is promulgated. A few commenters argue that a control technology selected for a particular standard under section 112 (j) or (d) should not remain fixed, and that the way to continually require better controls is through section 112(g). Others argue that because section 112(j) does not contain the word "modification", that all modifications should be handled by section 112(g).

Many argue that EPA's approach to coordinating sections section 112 (j), (d), and (g) would result in unnecessary regulatory burdens, such as: (1) regulating sources that emit below "de minimis" amounts under section 112(g) as new sources, (2) stifling technological advance and delay needed process changes through over-regulation, and (3) subjecting some sources to repeated MACT determinations, and perhaps forcing sources to replace controls required under section 112(g) with controls required under section 112(j).

Other commenters endorsed EPA's approach to coordinating section 112(j), (g), and (d), by asserting that since section 112(j) standards will apply to an entire source category, it is important that they be established according to a philosophy compatible with section 112(d).

The EPA recognizes that changes to a source subject to a section 112(d) MACT standard will be subject to the same control requirements that already apply under section 112(d). The EPA believes that section 112(g) establishes case-by-case MACT to cover those major sources who make modifications before a

promulgated MACT standard applies. Therefore consistency would suggest that similarly, changes to a source subject to a case-by-case MACT standard under section 112(j)—which acts in place of a section 112(d) standard—should be subject to the same control requirements that already apply under section 112(j). While under this approach section 112(g) continues to require assessment of whether a modification has occurred after a section 112(d) or section 112(j) standard is in effect, it will not dictate the level of control when the requirements of section 112(d) or section 112(j) are more stringent. The EPA believes that the internal consistency of this approach would yield a more consistent application of controls on major sources than would prolonging the use of case-by-case MACT under section 112(g).

Moreover the EPA does not intend that case-by-case controls applied under section 112(j) will result in subjecting sources to repeating and conflicting MACT determinations. The EPA expects that case-by-case MACT determinations under section 112(j) will require updates to those made under section 112(g) only in rare cases.

A further reason for rejecting the approach that section 112(g) control extends to sources covered by more stringent section 112(d) or section 112(j) standards is that it leads to the conclusion that many new sources within the section 112(a)(4) definition of new source would forever escape having to apply a new source MACT level of control.

Section 112(a)(4) defines a new source as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Thus, once a standard has been set under section 112(d), any new source will be subject to new source MACT. The MACT standard will define the portion of a facility that is considered a "source" for the purposes of the particular standard. Such source may be either an entire major source, or one or more sources within the major source. (Of course a MACT standard can also be set for area sources, which are stationary sources that are not part of a major source; but as section 112(j) does not apply to area sources, that is not relevant here).

Section 112 (g) applies to construction, reconstruction, or modification of major sources, and in many cases will have an effect on sources earlier than section 112 (d) or (j) standards. However, section 112 (g) only requires new source MACT on

"constructed" major sources, and considers any other new emission unit to be a modification of an existing major source. As a "modification," such a new emission unit will be required to apply for existing source case-by-case MACT determination under section 112(g). Therefore if section 112(g) were to constrain the application of a subsequent section 112(j) or section 112(d) standard, many new emission units under the section 112(a)(4) definition of "new source" would never be required to comply with new source MACT.

In addition, under section 112(g) a new emission unit might not even be required to meet an existing source MACT level of control. Section 112(g) allows for modifications to either: (1) comply with a case-by-case "existing source" MACT determination under section 112(g); (2) offset emissions increases in lieu of applying section 112(g) existing source MACT requirements; or (3) if its emissions were below section 112(g) de minimis levels, not be subject to any control requirements at all. The EPA believes that section 112(g) thus provides major sources with a great deal of needed flexibility before sections 112 (d) or (j) standards are set; but that once those standards are in place the Act intends that these sources must comply with the specific control technology requirements of those standards instead of those of section 112(g).

Finally, the interpretation that section 112(g) governs the control requirements on new emission units at major sources to which section 112 (d) or (j) standards already apply would have some anomalous implications. One example would be a new emission unit whose emissions are below section 112(g) de minimis levels for a particular hazardous air pollutant. If that emission unit were added to a major source, it would be exempt from the requirements of section 112(g), but would be required to apply new source MACT control under section 112(j). However, if that emission unit were not below section 112(g) de minimis levels, it would be required to comply with section 112(g). If section 112(g) requirements limit the application of section 112(j), then the source would be required to apply existing source MACT. In this instance, a smaller emission unit would be required to control more stringently than a larger emission unit.

Another example of anomalies resulting from this reading of the statute would be a section 112(d) standard that sets new source MACT for new area sources in a source category. Under this reading, major sources adding new

sources could avoid new source MACT, but any new area source would have to meet new source MACT. Again, a smaller unit would be required to control more stringently than a larger emission unit.

Several commenters argue that the requirements of section 112(j) should only apply to new and existing major sources once, at the time the hammer falls, and that subsequent construction of new major sources, or additions to existing major sources should not be subject to section 112(j) requirements. These commenters state that such subsequent changes should be governed by section 112(g) requirements.

The EPA does not believe that section 112(j) is only applicable at the time that the hammer falls. Section 112(j) is intended to take the place of section 112(d) standards, and thus should apply to all sources in the relevant category until the section 112(d) standard takes over. Thus, a new source constructed after the hammer date, but before a MACT standard is promulgated, should be subject to section 112(j) to the same extent as a source that is covered by section 112(j) on the date the hammer falls.

The EPA believes that under its preferred approach, the substantive control requirements of section 112(g) would be pre-empted by the more stringent requirements of a relevant section 112(j) or section 112(d) standard. Relying on section 112(g) to cover new emission units after the section 112(j) deadline is insufficient because it does not require application of the equivalent of section 112(d) standards to all sources in the relevant source category.

Similarly, some commenters argue that if a major source has complied with section 112(g), it should have to do no more under section 112(j). Under the EPA's preferred approach, in most cases compliance with section 112(g) will be sufficient under section 112(j), but there are some situations where section 112(j) may require more control. For example, an existing major source that has been modified and has met case-by-case MACT under section 112(g) may not have installed MACT on all emission units in a given source category, because some emission units may have offset out of control, and emission units below section 112(g) de minimis emission rates will not have applied control. Under the EPA's preferred approach, section 112(j) would require case-by-case MACT on all the emission units within the major source that are included in the category for which the section 112(j) deadline has passed. However in most cases where existing

source MACT controls have been applied under section 112(g), those controls under section 112(g) will suffice for emission units required to install existing source MACT under section 112(j). (There may be rare cases where section 112(j) will require new source MACT on some emission units that only have to meet existing source MACT under section 112(g). For example, an emission unit constructed after proposal of a section 112(d) MACT standard, but before the section 112(j) deadline, would have to meet existing source MACT under section 112(g) and later new source MACT under section 112(j). This distinction will require more stringent control in cases where the permitting authority finds new source MACT to be more stringent than existing source MACT). Again, this discussion outlines the EPA's preferred approach in implementing section 112(g) and achieving a consistent relationship across sections 112(d), 112(g), and 112(j). The EPA recently proposed a rule implementing section 112(g) and a final determination on the relationship between these provisions will be made in that rulemaking.

Administrative consistency. Voluntary administrative procedures for new sources under section 112(j), as outlined in § 63.54 of today's rule, are intended to be analogous to administrative requirements that will be established for modified, constructed, and reconstructed sources under section 112(g) of the Act. These requirements were proposed in § 63.40 through 63.48 of this subpart, at 59 FR 15504 (April 1, 1994).

Figure 1 illustrates the link between the voluntary section 112(j) preconstruction review process and the proposed section 112(g) administrative requirements. Although the EPA believes that section 112(j) does not provide authority for an upfront review of all new sources, the EPA believes, as a matter of policy, that whether preconstruction or pre-operation review is done under the authority of section 112(g) or section 112(j), the MACT determination can be incorporated directly into the title V permit by administrative amendment if the review process contains the elements necessary to make it an "enhanced" process, as discussed in section III.C. of this preamble.

Before the section 112(j) deadline, such sources will be required to make a case-by-case MACT determination under section 112(g). After the section 112(j) deadline, these sources will be required to make a case-by-case MACT determination under section 112(j). Many of these sources may still be

subject to preconstruction or pre-operation review under section 112(g). Sources applying for approval of a case-by-case MACT determination under section 112(g), but who will be subject to section 112(j) new source MACT, need to know this before they construct, in order to install the right equipment.

In addition there will be new sources that may not be covered by section 112(g), but who may be required to install new source MACT under section 112(j). For example, an owner/operator may intend to make an offset showing that would avoid a case-by-case MACT determination under section 112(g). Or a new unit's emissions may fall below a section 112(g) de minimis level for a specific pollutant. In both of these cases, the owner or operator should know in advance of the section 112(j) deadline that they may be required to install new source MACT under section 112(j).

Therefore, any owner or operator planning to construct a new major source, or any existing major source planning to install a new emission unit after a scheduled promulgation date for a source category, is encouraged to undergo "enhanced" preconstruction or pre-operation review under section 112(j). This is the only way to satisfy the requirements of title V to allow incorporation of section 112(j) MACT emission limits in the operating permit by administrative amendment.

B. Section 112(l) Delegation Process

Under section 112(l) of the Act, States have the option of developing and submitting to the Administrator a program for implementing the requirements of section 112, including section 112(j). The EPA rule implementing section 112(l) is contained in § 63.90 through § 63.96 of 40 CFR part 63.

The EPA believes that section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements. There may be, however, some instances where section 112(l) approvals could streamline the process. For example, a State may have an existing rule for a source category for which it could be demonstrated that all sources are achieving a level of control no less stringent than required under the case-by-case MACT requirements of section 112(j). The EPA believes that there may be advantages in obtaining approval under subpart E for such instances.

C. Section 112(i)(5) Early Reductions Program

Section 112(i)(5) of the Act allows EPA to grant a source a 6 year compliance extension from a section 112(d) MACT standard if the source achieves "early reductions" of its emissions. An early reduction is defined as a 90 percent reduction in a source's hazardous air pollutant emissions (95 percent reduction in a source's particulate emissions) before the relevant MACT standard is proposed. The source's commitment to achieve early reductions must be federally enforceable, must be included in the title V permit, and must be submitted to EPA within 120 days of establishment of a title V permit program, or, if later, before the relevant section 112(d) standard for that source category is proposed. These commitments to reduce emissions early become classified as alternative emission limitations throughout the 6 year extension period. Alternative emission limitations are the "applicable emission requirements" for the early reduction source.

However, § 63.52(c) provides that an alternative emission limitation established for the purpose of early reduction credit can be included as a MACT emission limitation in the permit, so long as the reduction was achieved by the date established in the source category schedule for standards. This requirement is established pursuant to the specific provisions of section 112(j)(5).

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A-93-32. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are:

- (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and
- (2) To serve as the record in case of judicial review. The docket is available for public inspection at the EPA's Air Docket, which is listed under the ADDRESSES section of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/94), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof;
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the EPA has determined that this action is a "significant regulatory action" within the meaning of the Executive Order, because it may materially affect the environment, public health, and State and local governments. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB's suggestions or recommendations will be documented in the public record.

Any written comments from OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under ADDRESSES. The docket is available for public inspection at the EPA Air Docket Section, (LE-131), ATTN: Docket No. A-93-32, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) requires the EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

(4) regulatory requirements are likely to result in closures of small entities.

This regulation does not affect a significant number of small businesses, small governmental jurisdictions, or small institutions, because this regulation only affects major sources of hazardous air pollutants. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that today's rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned the OMB control no. 2060-0266. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1648.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-2136), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or by calling (202) 260-2740.

This collection of information is estimated to have an average annual public reporting burden of approximately 200 hours per respondent. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM-2136), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 29, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
National Emission Standards for Hazardous Air Pollutants for Source Categories:	
63.52–63.56	2060–0266

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding a new subpart B, consisting of §§ 63.40 through 63.56 to read as follows:

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

Sec.

63.40–63.49 [Reserved]

63.50 Applicability.

63.51 Definitions.

63.52 Approval process for new and existing emission units.

63.53 Application content for case-by-case MACT determinations.

63.54 Preconstruction review procedures for new emission units.

63.55 Maximum achievable control technology (MACT) determinations for emission units subject to case-by-case determination of equivalent emission limitations.

63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

§§ 63.40–63.49 [Reserved]

§ 63.50 Applicability.

(a) *General applicability.* The requirements of §§ 63.50 through 63.56 implement section 112(j) of the Clean Air Act (as amended in 1990). The requirements of §§ 63.50 through 63.56 apply in each State beginning on the effective date of an approved title V permit program in such State. These requirements apply to the owner or operator of a major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the Administrator has failed to promulgate an emission standard under this part by the section 112(j) deadline.

(b) *Relationship to State and local requirements.* Nothing in §§ 63.50 through 63.56 shall prevent a State or local regulatory agency from imposing more stringent requirements than those contained in these subsections.

(c) *Retention of State permit program approval.* In order to retain State permit program approval, a State must, by the section 112(j) deadline for a source category, obtain sufficient legal authority to establish equivalent emission limitations, to incorporate those requirements into a title V permit, and to incorporate and enforce other requirements of section 112(j).

§ 63.51 Definitions.

Terms used in §§ 63.50 through 63.56 of this subpart that are not defined below have the meaning given to them in the Act, in subpart A of this part.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options for emission units subject to the provisions of this subpart, information contained in the following information sources as of the section 112(j) deadline:

(1) A relevant proposed regulation, including all supporting information;

(2) Background information documents for a draft or proposed regulation;

(3) Any regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination;

(4) Data and information available from the Control Technology Center developed pursuant to section 112(l)(3) of the Act, and

(5) Data and information contained in the Aerometric Information Retrieval System (AIRS) including information in the MACT database, and

(6) Any additional information that can be expeditiously provided by the Administrator, and

(7) Any information provided by applicants in an application for a permit, permit modification, administrative amendment, or Notice of MACT Approval pursuant to the requirements of this subpart.

(8) Any additional relevant information provided by the applicant.

Control technology means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures which:

(1) Reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture, or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 USC 7412(h); or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Emission point means any part or activity of a major source that emits or has the potential to emit, under current operational design, any hazardous air pollutant.

Emission unit means any building, structure, facility, or installation. This could include an emission point or collection of emission points, within a major source, which the permitting authority determines is the appropriate entity for making a MACT determination under section 112(j), i.e., any of the following:

(1) An emission point that can be individually controlled.

(2) The smallest grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(3) Any grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(4) A grouping of emission points that are functionally related. Equipment is functionally related if the operation or action for which the equipment was specifically designed could not occur without being connected with or without relying on the operation of another piece of equipment.

(5) The entire geographical entity comprising a major source in a source category subject to a MACT determination under section 112(j).

Enhanced review means a review process containing all administrative steps needed to ensure that the terms and conditions resulting from the review process can be incorporated into the title V permit by an administrative amendment.

Equivalent emission limitation means an emission limitation, established under section 112(j) of the Act, which is at least as stringent as the MACT standard that EPA would have promulgated under section 112(d) or section 112(h) of the Act.

Existing major source means a major source, construction or reconstruction of which is commenced before EPA proposed a standard, applicable to the major source, under section 112(d) or (h), or if no proposal was published, then on or before the section 112(j) deadline.

Maximum achievable control technology (MACT) emission limitation for existing sources means the emission limitation reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. This limitation shall not be less stringent than the MACT floor.

Maximum achievable control technology (MACT) emission limitation for new sources means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or

subcategory to which such emission standard applies.

Maximum Achievable Control Technology (MACT) floor means:

(1) For existing sources:
(i) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

(ii) The average emission limitation achieved by the best performing five sources in the United States (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for a category or subcategory of stationary sources with fewer than 30 sources;

(2) For new sources, the emission limitation achieved in practice by the best controlled similar source.

New emission unit means an emission unit for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Clean Air Act (as amended in 1990), whichever comes first, except that, as provided by § 63.52(f)(1), an emission unit, at a major source, for which construction or reconstruction is commenced before the date upon which the area source becomes a major source, shall not be considered a new emission unit if, after the addition of such emission unit, the source is still an area source.

New major source means a major source for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Clean Air Act (as amended in 1990), whichever comes first.

Permitting authority means the permitting authority as defined in part 70 of this chapter.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part. The

applicable date for categories of major sources is contained in the source category schedule for standards.

Similar source means an emission unit that has comparable emissions and is structurally similar in design and capacity to other emission units such that the emission units could be controlled using the same control technology.

Source category schedule for standards means the schedule for promulgating MACT standards issued pursuant to section 112(e) of the Act.

United States means the United States, its possessions and territories.

§ 63.52 Approval process for new and existing emission units.

(a) *Application.* (1) Except as provided in § 63.52(a)(3), if the Administrator fails to promulgate an emission standard under this part on or before an applicable section 112(j) deadline for a source category or subcategory, the owner or operator of an existing major source that includes one or more stationary sources in such category or subcategory, shall submit an application for a title V permit or application for a significant permit modification, whichever is applicable, by the section 112(j) deadline.

(2) If the Administrator fails to promulgate an emission standard under this part on or before an applicable section 112(j) deadline for a source category or subcategory, the owner or operator of a new emission unit in such source category or subcategory shall submit an application for a title V permit or application for a significant permit modification or administrative amendment, whichever is applicable, in accordance with procedures established under title V.

(3) (i) The owner or operator of an existing major source that already has a title V permit requiring compliance with a limit that would meet the requirements of section 112(j) of the Act, shall submit an application for an administrative permit amendment, by the section 112(j) deadline, in accordance with procedures established under title V.

(ii) The owner or operator of a new emission unit that currently complies with a federally enforceable alternative emission limitation, or has a title V permit that already contains emission limitations substantively meeting the requirements of section 112(j), shall submit an application for an administrative permit amendment confirming compliance with the requirements of section 112(j), in accordance with procedures established under title V, and not later than the date

30 days after the date construction or reconstruction is commenced.

(4) In addition to meeting the requirements of § 63.52(a)(2), the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction, pursuant to § 63.54.

(b) *Permit review.* (1) Permit applications submitted under this paragraph will be reviewed and approved or disapproved according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the emission unit is located. In the event that the permitting authority disapproves a permit application submitted under this paragraph or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the permitting authority not later than six months after first being notified that the application was disapproved or is incomplete.

(2) If the owner or operator has submitted a timely and complete application for a title V permit, significant permit modification, or administrative amendment required by this paragraph, any failure to have this permit will not be a violation of the requirements of this paragraph, unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(c) *Emission limitation.* The permit or Notice of MACT Approval, whichever is applicable, shall contain an equivalent emission limitation (or limitations) for that category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in subpart D of this part are met, the permit or Notice of MACT Approval may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(1) The permit or Notice will contain an emission standard or emission limitation to control the emissions of hazardous air pollutants. The MACT emission limitation will be determined by the permitting authority and will be based on the degree of emission reductions that can be achieved, if the control technologies or work practices are installed, maintained, and operated properly. Such emission limitation will be established consistent with the principles contained in § 63.55.

(2) The permit or Notice will specify any notification, operation and maintenance, performance testing, monitoring, reporting and recordkeeping requirements. The permit or Notice will include the following information:

(i) In addition to the MACT emission limitation required by paragraph (c)(1) of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established pursuant to title V, § 63.52(e), and, at the discretion of the permitting authority, to subpart A of this part;

(iii) A statement requiring the owner or operator to comply with all requirements contained in subpart A of this part deemed by the permitting authority to be applicable;

(iv) A compliance date(s) by which the owner or operator shall be in compliance with the MACT emission limitation, and all other applicable terms and conditions of the Notice.

(d)(1) *Compliance date.* The owner or operator of an existing major source subject to the requirements of this paragraph shall comply with the emission limitation(s) established in the source's title V permit. In no case will such compliance date exceed 3 years after the issuance of the permit for that source, except where the permitting authority issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B), or unless otherwise specified in section 112(i), or in subpart D of this part.

(2) The owner or operator of a new emission unit subject to the requirements of this paragraph shall comply with a new source MACT level of control immediately upon issuance of the title V permit for the emission unit.

(e) *Enhanced monitoring.* In accordance with section 114(a)(3) of the Act, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emission limitations established under this subpart.

(f) *Area sources that become major sources.* (1) After the effective date of this subpart, the owner or operator of a new or existing area source that

increases its emissions of, or its potential to emit, hazardous air pollutants such that the source becomes a major source that is subject to this subpart shall submit an application for a title V permit or application for a significant permit modification, or administrative amendment, whichever is applicable, by the date that such source becomes a major source.

(i) If an existing area source becomes a major source by the addition of an emission unit or as a result of reconstructing, that added emission unit or reconstructed emission unit shall comply with all requirements of this subpart that affect new emission units, including the compliance date for new emission units established in § 63.52(d).

(ii) If an area source, constructed after the section 112(j) deadline, becomes a major source solely by virtue of a relaxation in any federally enforceable emission limitation, established after the section 112(j) deadline, on the capacity of an emission unit or units to emit a hazardous air pollutant, such as a restriction on hours of operation, then that emission unit or units shall comply with all requirements of this subpart that affect new emission units, on or before the date of such relaxation.

(2) After the effective date of this subpart, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the Act that results in an area source becoming a major source, then the owner or operator of such major source shall submit an application for a title V permit or application for a significant permit modification, or administrative amendment, whichever is applicable, on or before the date 6 months from the date that such source becomes a major source. If an existing area source becomes a major source as a result of the Administrator establishing a lesser quantity emission rate, then any emission unit, at that source, for which construction or reconstruction is commenced before the date upon which the source becomes major shall not be considered a new emission unit.

§ 63.53 Application content for case-by-case MACT determinations.

(a) *MACT Demonstration.* Except as provided by § 63.55(a)(3), an application for a MACT determination shall demonstrate how an emission unit will obtain the degree of emission reduction that the Administrator or the State has determined is at least as stringent as the emission reduction that would have been obtained had the relevant emission standard been promulgated according to the source category schedule for

standards for the source category of which the emission unit is a member.

(b) *MACT Application.* The application for a MACT determination shall contain the following information:

(1) The name and address (physical location) of the major source;

(2) A brief description of the major source, its source category or categories, a description of the emission unit(s) requiring a MACT determination pursuant to other requirements in this subpart, and a description of whether the emission unit(s) require new source MACT or existing source MACT based on the definitions established in § 63.51;

(3) For a new emission unit, the expected date of commencement of construction;

(4) For a new emission unit, the expected date of completion of construction;

(5) For a new emission unit, the anticipated date of startup of operation;

(6) The hazardous air pollutants emitted by each emission point, and an estimated emission rate for each hazardous air pollutant.

(7) Any existing federally enforceable emission limitations applicable to the emission point.

(8) The maximum and expected utilization of capacity of each emission point, and the associated uncontrolled emission rates for each emission point;

(9) The controlled emissions for each emission point in tons/year at expected and maximum utilization of capacity, and identification of control technology in place;

(10) Except as provided in § 63.55(a)(3), the MACT floor as specified by the Administrator or the permitting authority.

(11) Except as provided in § 63.55(a)(3), recommended emission limitations for the emission unit(s), and supporting information, consistent with § 63.52(c) and § 63.55(a).

(12) Except as provided in § 63.55(a)(3), a description of the control technologies that will apply to meet the emission limitations including technical information on the design, operation, size, estimated control efficiency, and any other information deemed appropriate by the permitting authority, and identification of the emission points to which the control technologies will be applied;

(13) Except as provided in § 63.55(a)(3), parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

(14) Any other information required by the permitting authority including, at the discretion of the permitting

authority, information required pursuant to subpart A of this part.

§ 63.54 Preconstruction review procedures for new emission units.

(a) *Review process for new emission units.* (1) If the permitting authority requires an owner or operator to obtain or revise a title V permit before construction of the new emission unit, or when the owner or operator chooses to obtain or revise a title V permit before construction, the owner or operator shall follow the administrative procedures established under title V before construction of the new emission unit.

(2) If an owner or operator is not required to obtain or revise a title V permit before construction of the new emission unit (and has not elected to do so), but the new emission unit is covered by any preconstruction or pre-operation review requirements established pursuant to section 112(g) of the Act, then the owner or operator shall comply with those requirements, in order to ensure that the requirements of section 112(j) and section 112(g) are satisfied. If the new emission unit is not covered by section 112(g), the permitting authority, in its discretion, may issue a Notice of MACT Approval, or the equivalent, in accordance with the procedures set forth in paragraphs (b) through (h) of this section, or an equivalent permit review process, before construction or operation of the new emission unit.

(3) Regardless of the review process, the MACT determination shall be consistent with the principles established in § 63.55. The application for a Notice of MACT Approval or a title V permit, permit modification, or administrative amendment, whichever is applicable, shall include the documentation required by § 63.53.

(b) *Optional administrative procedures for preconstruction or pre-operation review for new emission units.* The permitting authority may provide for an enhanced review of section 112(j) MACT determinations that provides for review procedures and compliance requirements equivalent to those set forth in paragraphs (b) through (h) of this section.

(1) The permitting authority will notify the owner or operator in writing as to whether the application for a MACT determination is complete or whether additional information is required.

(2) The permitting authority will approve an applicant's proposed control technology, or the permitting authority will notify the owner or operator in

writing of its intention to disapprove a control technology.

(3) The owner or operator may present in writing, within a time frame specified by the permitting authority, additional information, considerations, or amendments to the application before the permitting authority's issuance of a final disapproval.

(4) The permitting authority will issue a preliminary approval or issue a disapproval of the application, taking into account additional information received from the owner or operator.

(5) A determination to disapprove any application will be in writing and will specify the grounds on which the disapproval is based.

(6) Approval of an applicant's proposed control technology will be set forth in a Notice of MACT Approval (or the equivalent) as described in § 63.52(c).

(c) *Opportunity for public comment on Notice of MACT Approval.* The permitting authority will provide opportunity for public comment on the preliminary Notice of MACT Approval prior to issuance, including, at a minimum,

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's tentative determination;

(2) A period for submittal of public comment of at least 30 days; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in § 63.52(c). The form and content of the notice will be substantially equivalent to that found in § 70.7 of this chapter.

(4) An opportunity for a public hearing, if one is requested. The permitting authority will give at least 30 days notice in advance of any hearing.

(d) *Review by the EPA and Affected States.* The permitting authority will send copies of the preliminary notice (in time for comment) and final notice required by paragraph (c) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which the new source would be located. The permitting authority will provide EPA with a review period for the final notice of at least 45 days, and will not issue a final Notice of MACT approval unless EPA objections are satisfied.

(e) *Effective date.* The effective date for new sources under this subsection shall be the date a Notice of MACT

Approval is issued to the owner or operator of a new emission unit.

(f) *Compliance date.* New emission units shall comply with case-by-case MACT upon issuance of a title V permit for the emission unit.

(g) *Compliance with MACT*

Determinations. An owner or operator of a major source that is subject to a MACT determination shall comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements established under § 63.52(e), under title V, and at the discretion of the permitting authority, under subpart A of this part. The permitting authority will provide the EPA with the opportunity to review compliance requirements for consistency with requirements established pursuant to title V during the review period under paragraph (d) of this section.

(h) *Equivalency under Section 112(l).* If a permitting authority requires preconstruction review for new source MACT determinations under this subpart, such requirement shall not necessitate a determination under subpart E of this part.

§ 63.55 Maximum achievable control technology (MACT) determinations for emission units subject to case-by-case determination of equivalent emission limitations.

(a) *Requirements for emission units subject to case-by-case determination of equivalent emission limitations.* The owner or operator of a major source submitting an application pursuant to § 63.52 or § 63.54 shall include elements specified in § 63.53, taking into consideration the following requirements:

(1) When the Administrator has proposed a relevant emission standard for the source category pursuant to section 112(d) or section 112(h) of the Act, then the control technologies recommended by the owner or operator under § 63.53(b)(12), when applied to the emission points recommended by the applicant for control, shall be capable of achieving all emission limitations and requirements of the proposed standard unless the application contains information adequate to support a contention that:

(i) different emissions limitations represent the maximum achievable control technology emission limitations for the source category, or

(ii) requirements different from those proposed by EPA will be effective in ensuring that MACT emissions limitations are achieved.

(2) When the Administrator or the permitting authority has issued

guidance or distributed information establishing a MACT floor finding for the source category or subcategory by the section 112(j) deadline, then the recommended MACT emission limitations required by § 63.53(b)(11) must be at least as stringent as the MACT floor, unless the application contains information adequately supporting an amendment to such MACT floor.

(3)(i) When neither the Administrator nor the permitting authority has issued guidance or distributed information establishing a MACT floor finding and MACT determination for a source category or subcategory by the section 112(j) deadline, then the owner or operator shall submit an application for a permit or application for a Notice of MACT Approval, whichever is applicable, containing the elements required by § 63.53(b) (1) through (9) and (14), by the section 112(j) deadline.

(ii) The owner or operator may recommend a control technology that either achieves a level of control at least as stringent as the emission control that is achieved in practice by the best controlled similar source, or obtains at least the maximum reduction in emissions of hazardous air pollutants that is achievable considering costs, non air quality health and environmental impacts, and energy requirements.

(4) The owner or operator may select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(b) *Requirements for permitting authorities.* The permitting authority will determine whether the permit application or application for a Notice of MACT Approval is approvable. If approvable, the permitting authority will establish hazardous air pollutant emissions limitations equivalent to the limitation that would apply if an emission standard had been issued in a timely manner under subsection 112 (d) or (h) of the Act. The permitting authority will establish these emissions

limitations consistent with the following requirements and principles:

(1) Emission limitations will be established for all emission units within a source category or subcategory for which the section 112(j) deadline has passed.

(2) Each emission limitation for an existing emission unit will reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emission, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by emission units in the category or subcategory for which the section 112(j) deadline has passed. This limitation will not be less stringent than the MACT floor, and will be based upon available information and information generated by the permitting authority before or during the application review process, including information provided in public comments.

(3) Each emission limitation for a new emission unit will not be less stringent than the emission limitation achieved in practice by the best controlled similar source, and must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable. This limitation will be based at a minimum upon available information and information provided in public comments.

(4) When the Administrator has proposed a relevant emissions standard for the source category pursuant to section 112(d) or section 112(h) of the Act, then the equivalent emission limitation established by the permitting authority shall ensure that all emission limitations and requirements of the proposed standard are achieved, unless the permitting authority determines based on additional information that:

(i) Different emissions limitations represent the maximum achievable control technology emission limitations for the source category; or

(ii) Requirements different from those proposed by EPA will be effective in ensuring that MACT emissions limitations are achieved.

(5) When the Administrator or the permitting authority has issued guidance or collected information

establishing a MACT floor finding for the source category or subcategory, the equivalent emission limitation for an emission unit must be at least as stringent as that MACT floor finding unless, based on additional information, the permitting authority determines that the additional information adequately supports an amendment to the MACT floor. In that case, the equivalent emission limitation must be at least as stringent as the amended MACT floor.

(6) The permitting authority will select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(7) Nothing in this subpart will prevent a State or local permitting authority from establishing an emission limitation more stringent than required by Federal regulations.

(c) *Reporting to National Data Base.* The owner or operator shall submit additional copies of its application for a permit, permit modification, administrative amendment, or Notice of MACT Approval, whichever is applicable, to the EPA by the section 112(j) deadline for existing emission units, or by the date of the application for a permit or Notice of MACT Approval for new emission units.

§ 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

(a) If the Administrator promulgates an emission standard that is applicable to one or more emission units within a major source before the date a permit application under this paragraph is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under § 63.52, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under section 112 (d) or (h) of the Act that is applicable

to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority shall revise the permit upon its next renewal to reflect the promulgated standard. The permitting authority will establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, if the Administrator promulgates an emission standard that is applicable to a source after the date a permit application is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is at least as stringent as that required by the promulgated standard.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 940366-4143; I.D. 051094A]

RIN 0648-AF39

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement one of the conservation and management measures in Amendment 5 to the Fishery Management Plan for the American Lobster Fishery (FMP). This final rule maintains the current 3¼-inch (8.26-cm) minimum carapace length, thus rescinding the scheduled increases in the minimum size limit. The intent of this rule is to relieve a regulatory burden.

EFFECTIVE DATE: May 17, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and the final supplemental environmental impact statement (FSEIS)

are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906, telephone 617-565-8937.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

SUPPLEMENTARY INFORMATION:

Amendment 5, with some exceptions, was approved by NMFS on May 11, 1994. Background to the amendment was discussed in the proposed rule (59 FR 11029, March 9, 1994), and is not repeated here. The following measures were disapproved on May 11, 1994: (1) The division of the fleet into vessel permit categories, (2) the limits on lobster landings according to a vessel's permit category and the quota for vessels that operate gear other than lobster pots, and (3) mandatory reporting.

NMFS is implementing the approved measures of Amendment 5 by two separate final rules. This final rule implements one of the measures that was approved, which is to maintain the minimum carapace length for lobsters at the current size of 3¼ inches (8.26 cm). Thus, this rule prevents the incremental increases in the minimum carapace length that are currently in the regulations and scheduled to go into effect on May 18, 1994, and subsequent dates. The second rule, which is scheduled to be published within the next 3 weeks, will implement the remaining approved provisions of Amendment 5. The second rule will discuss the comments and responses on the measures contained in that rule, and will explain the reasons for disapproving three provisions of Amendment 5. Publication of the first rule will not affect the purpose or impact of the other approved Amendment 5 measures.

Comments and Responses

Comment: One industry association and one individual stated that the American lobster carapace length increases required in Amendment 2 proved to be effective in protecting small, immature lobsters and egg-bearing females and are preferable to the new management measures, which they oppose.

Response: The minimum carapace length requirement remains a primary management measure for American lobster. However, the lobster resource has been determined to be overfished and the remaining 2 carapace length increases required under the existing regulations would not alone have